

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
APPENDIX**

ORIG1

76-1260

IN THE

United States Court of Appeals

For the Second Circuit

No. 76-1260

UNITED STATES OF AMERICA,

Plaintiff-Appellee,
against

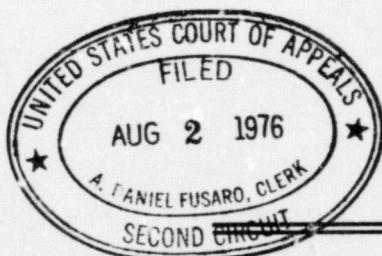
SEYMOUR ROSENWASSER,

Defendant-Appellant.

B
P/S

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

DEFENDANT-APPELLANT'S APPENDIX



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INDEX

	PAGE
Docket Entries	1
Indictment	6
Colloquy	9
Transcript of Trial Testimony of Richard K. Redman	10
Transcript of Trial Testimony of Ernest A. Haridopolos	30
Transcript of Trial Testimony of Seymour Rosenwasser	46
Court's Charge to the Jury	126
Transcript of Sentencing Proceedings of Gerald Allicino	179
Transcript of Sentencing Proceedings of Seymour Rosenwasser	190
Judgment and Probation/ Commitment Order	198
Letter of Probation Department to Mrs. Marily Rosenwasser, dated June 4th, 1976	201
Notice of Appeal	203

DOCKET ENTRIES

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
THE UNITED STATES,

vs.

No. 75 CR 278 Platt, J.

GERALD ALLICINO and
SEYMOUR ROSENWASSER,

Defendants.

-----X

Proceedings

4- 8-75 Before Weinstein, J. - Indictment filed. Bench Warrant Ordered for deft. Allicino - Bench Warrant Issued.

4-16-75 Before Platt, J. - Case called - Adjd. to 4/25/75 at 9:30 A.M. Bail set at \$5,000.00 P.R. Bond (ALLICINO).

5- 7-75 Bench Warrant retd. and filed - executed.

5-25-75 Before Platt, J. - Case called - Defts. and counsel present - Defts. arraigned and each deft. enters a plea of not guilty - case adjd. to 5/23/75 - bail set at \$5,000.00 P.R. Bond as to each deft.

5-25-75 Notices of appearances filed (BOTH DEFTS.)

5-23-75 Before Platt, J. - Case called - defts. and counsel present - Case adjd. to 6/6/75 at 11:30 A.M. for all motions.

5-28-75 Govts. Notice of Readiness for Trial filed.

6- 3-75 Notice of Motion filed & Memorandum of Law, ret. June 6, 1975 for Discovery and Bill of Particulars (ALLICINO)

6- 3-75 Notice of Motion filed for Bill of Particulars, and suppressing evidence, etc. (ret. June 6, 1975 Deft. Rosenwasser)

6- 5-75 Govts. affidavit filed in opposition to defts. motion for Bill of Particulars (deft ALLICINO); Govts' affidavit in response to motion for Particulars (ROSENWASSER); Govts' Memorandum of Law fined (sic) in opposition to defts. motion to suppress (ROSENWASSER).

6- 6-75 Before Platt, J. - Case called - Motions argued - granted and denied as indicated on the record - case set down for 6/20/75 at 11:00 A.M. - to set trial date.

6-20-75 Before Platt, J. - Memorandum and Order filed denying deft. Rosenwasser's motion for bill of particulars and discovery.

10- 3-75 Before Platt, J. - Case called - Defts. and counsel present - case adjd. to 10/14/75 at 9:30 A.M. for trial.

10-14-75 Before Platt, J. - Case called - Defts and counsel present - case adjd. to 11/17/75 at 9:30 A.M.

11-21-75 Before Platt, J. - Case called - Deft. Allicano (sic) and counsel present - adjd. to Jan. 5, 1975 for trial.

1- 5-76 Before Platt, J. - Case called - defts & couns. ls present - adjd. to Jan. 23, 1976.

1-23-76 Before Platt, J. - Case called - defts. not present - adjd. to 2-2-76.

2- 3-76 Notice of Motion filed, for dismissal of the indictment as to deft Allicano (sic), etc. (forwarded to chambers to set date).

2- 3-76 By Platt, J. - Opinion and Order filed - If the Govt is to be required to furnish a list of its witnesses and their addresses, the defts should be required to do the same, etc. Any exchange of names and addresses of witnesses shall occur not later than three days before commencement of the trial of this action.

2- 9-76 Affidavit in opposition to defts motion to dismiss the indictment (ALLICINO).

2-13-76 Before Platt, J. - Case called - deft and counsel present - motion to dismiss argued - decision reserved - deft to submit papers (ALLICINO).

2-18-76 Before PLATT, J. - Case called - deft Rosenwasser & atty. Arnold Wallack present - Pre-Trial Conference held and concluded.

2-20-76 Before Platt, J. - Case called - adjd. to 2/24/76 for trial at 2:00 P.M.

2-24-76 Before Platt, J. - Case called - trial ordered and begun - jurors selected and sworn - trial contd. to Feb. 25, 1976.

2-25-76 Before Platt, J. - Case called - trial resumed - deft. Rosenwasser moves for a severance - motion denied - Hearing on disqualification of Juror #1 Morris Greifinger - Juror #1 is excused - hearing concluded - Deft. ALLICANO (sic) motion for mistrial - denied - Trial contd. to 2-26-76.

2-26-76 Before Platt, J. - Case called - trial resumed - Defts. motion for a mistrial is denied. Deft ALLICANO's (sic) motion to dimiss is denied - deft. Rosenwasser's motion for a Judgment of Acquittal is denied - Deft. Allicino rests - trial contd. to 3-1-76.

3- 1-76 Before Platt, J. - Case called - Trial resumed - Defts motion for a mistrial is denied - Deft ALLICANO's (sic) motion for a Judgment of Acquittal is denied - deft Allicino rests - trial contd to 3-1-76.

3- 2-76 Before Platt, J. - Case called - trial resumed - trial contd to 3-3-75. (sic)

3- 2-76 By Platt, T. - Order of sustenance filed (Luncheon - 17 persons)

3- 3-76 Before Platt, J. - Case called - lefts & attys present - trial resumed - Jury resumes deliberations - Order of sustenance signed - jury returns with a verdict of guilty on counts 1 and 2 as to deft ALLICINO and guilty on count 1 as to deft ROSENWASSER. Jury polled and discharged - trial concluded - defts to renew all motions at time of sentencing - bail contd - sentences adjd without date.

3- 3-76 By Platt, J. - Order of sustenance filed (lunch - 14 persons)

4-27-76 Defts Allicino's sentence memorandum filed.

5-20-76 Before Platt, J. - Case called - deft ALLICANO (sic) & counsel Gustave Newman present - Deft sentenced on count 1 to imprisonment for 3 years on condition that he be confined in a jail type institution for 6 months and execution of remainder of the sentence is suspended and deft is placed on probation for 3 years and to pay a fine of \$2500; on count 2 deft is sentenced to 3 years imprisonment - to serve 6 months and remainder of sentence is suspended and deft is placed on 3 years probation - count 2 to run concurrently with count 1. On count 2 deft is to pay a fine of \$2500 for a total of \$5,000 in fines - bail contd and execution of fines stayed during period of appeal.

5-20-76 Judgment and commitment and order of probation filed - certified copies to Marshal & Probation (ALLICANO) (sic)

5-20-76 Notice of appeal filed (ALLICANO)

5-20-76 Docket entries and duplicate of Notice mailed to the Court of Appeals (ALLICANO).

5-21-76 Before Platt, J. - Case called - deft. and counsel present - deft renews all motions previously made - motions denied - deft ROSENWASSER sentenced on count 1 to imprisonment for a period of 2 years and deft shall become eligible for parole under T-18, U.S.C. Sec. 4205(b)(2) at such time as the Board of Parole may determine and the defendant shall pay a fine of \$5,000.000 - bail contd. pending appeal.

5-21-76 Judgment and Commitment filed - certified copies to Marshal.

5-24-76 Notice of appeal filed (ROSENWASSER).

5-24-76 Docket entries and duplicate of Notice mailed to the Court of Appeals (ROSENWASSER).

6-10-76 Order received from court of appeals that record be docketed on or before 6/29/76.

6-11-76 By Platt, J. - Order on stipulation withdrawing appeal filed (ALLICINO).

6-28-76 3 stenographers transcripts filed (One dated Feb. 25, one dated Feb. 26 and one dated Mar. 3, 1976.

A TRUE COPY ATTEST

6/29/76

LEWIS ORGEL, CLERK
/s/ ROSE SMITH, DEPUTY CLERK

INDICTMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

-against-

GERALD ALLICINO and SEYMOUR
ROSENWASSER,

No. 75 CR 278

Defendants.

-----X

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 6th day of March 1972, within the Eastern District of New York, the defendants GERALD ALLICINO and SEYMOUR ROSENWASSER did wilfully and unlawfully receive and have in their possession a quantity of women's knitted garments, having a value in excess of One Hundred Dollars (\$100.00), which goods had been stolen on or about March 3, 1972 from a motortruck belonging to the Arline Knitwear Company, Brooklyn, New York, while moving as a part of and constituting an interstate shipment of freight from New York to New Jersey, the defendants GERALD ALLICINO and SEYMOUR ROSENWASSER knowing the same to have been stolen. (Title 18, United States Code, Sections 659 and 2)

COUNT TWO

On or about and between the 3rd day of March 1972 and the 6th day of March 1972, both dates being approximate and inclusive, within the Eastern District of New York, the defendant GERALD ALLICINO and the defendant SEYMOUR ROSENWASSER, along with others known and unknown to the Grand Jury, did knowingly and wilfully conspire to commit an offense against the United States, in violation of Title 18, United States Code, Section 659, by conspiring to knowingly and wilfully receive and have in their possession a quantity of women's knitted garments having a value in excess of One Hundred Dollars (\$100.00), which garments had been stolen on or about March 3, 1972 from a motortruck belonging to Arline Knitwear Company, Brooklyn, New York, while they were moving as and constituting an interstate shipment of freight from New York to New Jersey, the defendants GERALD ALLICINO and SEYMOUR ROSENWASSER knowing them to have been stolen.

In furtherance of the said unlawful conspiracy and for the purpose of effecting the objectives thereof, the defendant GERALD ALLICINO and the defendant SEYMOUR ROSENWASSER committed, among others the following:

O V E R T A C T

1. On or about March 6, 1972, within the Eastern District of New York, the defendant GERALD ALLICINO and the defendant SEYMOUR ROSENWASSER met in Brooklyn, New York.
(Title 18, United States Code, Section 371)

A TRUE BILL

Foreman

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

1
2 THE CLERK: The United States of America vs. Gerald
3 Allicino and Seymour Rosenwasser.

4 MR. WALLACH: Your Honor, I don't want to be
5 troublesome. We made an objection and moved for
6 a severance because of the subsequent acts attributed
7 to the other defendant, do I have to renew that when
8 he opens to the jury and refers to it or could the
9 record show that we brought it to your attention?

10 THE COURT: I wish at the end of the opening
11 just jog me before one of you opens to call to the
12 jury's attention that the prosecutor refers to similar
13 acts, that he refers only to the defendant Mr.
14 Allicino and does not refer to Mr. Rosenwasser, if
15 and when proof is required in that event.

16 MR. NEWMAN: While I'm at it, Judge, my present
17 contemplation, I don't know what I'll do after Mr.
18 Epstein opens and indicates that my client plead to
19 a misdemeanor in connection with that charge.

20 THE COURT: That's up to you. You could do it
21 assuming you are going to put a subpoena in.

22 MR. LEVIN-EPSTEIN: I'll stipulate to it.

23 MR. NEWMAN: Thanks.

24 MR. LEVIN-EPSTEIN: May I ask one question? Mr.
25 Rosenwasser is represented by two attorneys at this

1 RICHARD K. REDMAN, having first been duly
2 sworn by the Clerk of the Court, was examined and
3 testified as follows:

4 THE CLERK: State your name for the record,
5 please.

6 THE WITNESS: Richard K. Redman, R-e-d-m-a-n.

7 DIRECT EXAMINATION

8 BY MR. LEVIN-EPSTEIN:

9 Q For the record once again, sir, would you state
10 your full name so that the jurors in the back of the box can
11 hear it.

12 A My name is Richard K. Redman, R-e-d-m-a-n.

13 Q What is your occupation, sir?

14 A Special agent with the Federal Bureau of
15 Investigation.

16 Q How long have you been so employed?

17 A Over seven years.

18 Q What is your current duty assignment?

19 A My current assignment is to the fugitive squad
20 in the New York City area.

21 Q Prior to your assignment, were you assigned to
22 another squad?

23 A Yes.

24 Q What squad was that?

25 A That was the hijacking squad or also known as

1 33

Redman-direct

2 the theft from interstate shipment squad.

3 Q Now, would you briefly describe what your
4 duties were and are as an FBI agent. First of all, briefly
5 what your duties were when you were assigned to the hijacking
6 squad?

7 A Yes. At that time I was assigned to investigate
8 matters dealing with the theft of shipments traveling in
9 interstate commerce.

10 (Continued next page.)

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1 34 Redman-direct

2 BY MR. LEVIN-EPSTEIN:

pa/ss

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3 Q Directing your attention to March 3rd, 1972,
4 did there come a time on that day when you were assigned to
5 begin investigation into the armed hijacking of a truck
6 belonging to the Arlene Knitwear Company in Brooklyn?

7 A Yes.

8 Q Did you become what is commonly called the case
9 agent in this case?

10 A Yes, I was.

11 Q Would you briefly tell us your duties as a
12 case agent?

13 A A case agent is the agent for the overall
14 investigation. He may have other agents also working in the
15 case, and most circumstances does. He is assigned to do the
16 administrative paper on it, and is responsible in general.

17 Q He is the primary investigator involved in the
18 case then?

19 A Yes.

20 Q Directing your attention to March 7th, 1972,
21 were you working on that day?

22 A Yes.

23 Q Were you working in your official capacity as
24 case agent on the Arlene Knitwear Company?

25 A Yes.

Q Part of your duties that day -- did there come
a time when you went someplace relating to this case?

A Yes.

Q Will you tell the jury, please, where it was
that you went?

A On that morning, as I recall, approximately a
little after 9:00 o'clock in the morning, I went to Pier 48
on the Hudson River in New York City, which was also located
at the intersection of Bank and West Street.

Q Now, moving off to another topic for just one
question, Agent Redman, during your last six and a half or
seven years in the FBI, how many of those years were in the
New York City area?

A Going on six.

Q During the course of the last six years, did
there ever come a time when you became familiar with a
location which was formerly known as the Federal Detention
Headquarters?

A Yes.

Q What was the Federal Detention Headquarters?

A It was the institution where federal prisoners
were incarcerated.

Q What was the address of the old headquarters?

A It's located on one of the corners at Bank and

2 West Streets in Manhattan.

3 Q With respect to Pier 48 where you said you went
4 on that morning, where is the old jail?

5 A Across the street on the opposite corner.

6 Q When you arrived in the vicinity of the jail at
7 West Street and Bank Street that morning, what, if anything,
8 did you do?

9 A I made a recovery of a truck.

10 Q Can you describe the truck that you recovered
11 for the jury?

12 A Yes. It was a 1970 International, straight
13 truck with a red cab, silver boxed, New York license plates,
14 and it had the markings, Arlene Knitwear on the doors of the
15 cab.

16 Q Did you ultimately identify this truck as being
17 related to the Arlene hijacking?

18 A I did.

19 Q How was it related?

20 A It was the truck that had been hijacked on
21 March 3rd, 1972.

22 MR. LEVIN-EPSTEIN: Your Honor, I ask that these
23 photographs be marked next exhibit for the Government
24 for identification in sequence.

25 MR. NEWMAN: I have no objection.

2 MR. LEVIN-EPSTEIN: I ask they be marked in
3 evidence then.

4 THE CLERK: Four photographs as 19-A, 19-B,
5 19-C and 19-D received in evidence.

6 (So marked.)

7 Q While the clerk is marking those photographs,
8 Agent Redman, on that morning, did there come a time when you
9 examined this recovered truck?

10 A Yes. On the morning of March 7th.

11 Q When you examined the truck, did you have
12 occasion to examine the cargo area of the truck?

13 A Yes, sir.

14 Q What, if anything, did you notice about the door
15 to the cargo area?

16 A The door had been forced open.

17 Q Based upon your experience and training in the
18 FBI, can you formulate an opinion as to what manner the door
19 was forced open?

20 A Yes. I would say the tool was put into the
21 crack of the door and had the door sprung.

22 Q From your examination of the truck, did you
23 notice any alarm device of any kind?

24 A I noticed the remains of an alarm device, yes,
25 sir.

2 Q Would you elaborate, please?

3 A The alarm device was ripped out, and part of
4 the remains were placed in the cargo section of the box of
5 the truck.

6 Q What is the box, by the way?

7 A That is the rear cargo area of the truck as
8 opposed to the cab where the driver sits, individual,
9 separate part of the truck.

10 Q Did there come a time when you examined that
11 cab area of the truck? Sir, did you examine the cab area of
12 the truck?

13 A I did.

14 Q Did you examine the interior of the truck?

15 A Yes.

16 Q Did you examine the dashboard, the area of the
17 dashboard of the truck?

18 A Yes.

19 Q What, if anything, did you notice about the
20 dashboard area that was unusual?

21 A Brackets where apparently a piece of equipment
22 was, and that was no longer there.

23 Q Where was these brackets situated on the
24 dashboard?

25 A Located underneath the part of the dashboard.

2 Q Did you obtain other forensic or scientific --
3 did you examine for fingerprints?

4 A Yes.

5 Q Did you obtain what you thought were fingerprints?

6 A I obtained some latent --

7 Q Would you explain to the jury what a latent
8 fingerprint is.

9 A It is an unidentified fingerprint.

10 Q You don't know whom it belongs to?

11 A That's right.

12 Q When you received a report from the FBI
13 laboratory as to the possible identification of these latent
14 fingerprints --

15 A Yes.

16 Q What results were obtained?

17 A No identification was effected. Not enough of
18 the identifying points were obtained.

19 Q What is an identifying point?

20 A The particular characteristics of the
21 fingerprint.

22 Q Did there come a time when during the course of
23 your examination any sort of photographic equipment was used?

24 A Yes.

25 Q By whom?

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Reuman-direct

2 A By me, sir.

3 Q Did you take some pictures?

4 A I di .

5 Q I show you Government's 19-A through D in
6 evidence and ask if you recognize those four photographs
7 (handing to witness)?

8 A Yes, I do.

9 Q Are these the photographs that you took on that
10 day?

11 A Yes, they are.

12 Q Or some of them?

13 A Yes.

14 Q Is that a fair and accurate portrayal of parts
15 of the truck as it appeared on that day?

16 A Yes.

17 Q Did there come a time when --

18 Directing your attention to 19-B in evidence,
19 to this particular picture. Could you tell the Court and
20 jury what is depicted there?21 A Yes. This particular portion is the Babaco
22 alarm system of the truck.

23 Q In what condition does it appear in this truck?

24 A The lid on the alarm system is hanging down and
25 shows the alarm system remains.

1 41

Redman-direct

294

2 Q Directing your attention to the photograph
3 which has been marked 19-A in evidence. Can you tell the
4 jury what is depicted in that photograph?

5 A Yes. This is the rear cargo area of the
6 straight truck in which the portion of the alarm system was
7 lined.

8 (Continued next page.)

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2 Q Did there come a time when you or other agents
3 of the FBI in your presence attempted to start the truck, that
4 you recall?

5 A No.

6 Q It didn't happen or you don't recall?

7 A Not that the agent had tried anything.

8 Q Did someone else try in your presence?

9 A Yes.

10 Q Would you tell the jury who?

11 A The driver, Luther Washington, who worked for
12 Arlene Knitwear Company.

13 Q Was he able to start the truck?

14 A No.

15 Q Do you know where the wires were?

16 A The wires had been torn out.

17 MR. LEVIN-EPSTEIN: One moment, your Honor.

18 Q Now, directing your attention, Agent Redman,
19 to the seven cartons on the table here, Government's Exhibits
20 12, 13, 14, 15, 16, 17 and 18 in Evidence, do you recognize
21 those cartons and their contents?

22 A Yes, I do.

23 Q Have you ever seen them before?

24 A Yes.

25 Q Can you tell the jury, please, when the first

1 43

Redman-direct

296

2 time was that you ever saw these cartons and their contents?

3 A When I made a recovery at the address in Brooklyn.

4 Q What address was that?

5 A 152 Barbey Street.

6 Q What is "a recovery," as you use the word?

7 A As I use the word, it is the finding, recovery
8 of goods that had been reported stolen.

9 Q Agent Redman, who lived and in fact still lives
10 at 152 Barbey Street?

11 A Solomon Braverman and his wife and Wallace Cascio
12 and his wife.

13 MR. LEVIN-EPSTEIN: Your Honor, at this time I
14 would submit to the Court that the connection has been
15 made.

16 THE COURT: Yes.

17 MR. NEWMAN: I renew my objection, Judge. That's
18 all.

19 THE COURT: All right. Objection overruled.

20 MR. PELUSO: Same objection.

21 Q Now, in your capacity as case officer, Agent
22 Redman, directing your attention to March 14, 1975, when you
23 met with the defendant, Seymour Rosenwasser --

24 A Yes.

25 Q Was that meeting part of your official investi-

2 gation?

3 A Yes.

4 Q Would you tell the jury, please, where you met
5 with him?

6 A At the factory located at 2395 Pacific Street.

7 Q Where is that?

8 A In Brooklyn, New York.

9 Q Did you have a conversation with him?

10 A Yes.

11 MR. LEVIN-EPSTEIN: I have no further questions.

12 CROSS-EXAMINATION

13 BY MR. NEWMAN:

14 Q Good afternoon, Agent Redman.

15 A Good afternoon.

16 Q As you know, I am Mr. Newman and I represent
17 Mr. Allicino. You were asked something by Mr. Levin-Epstein
18 using the language, "a recovery."19 MR. LEVIN-EPSTEIN: Objection. That was the word
20 used by the agent.

21 MR. NEWMAN: I am sorry.

22 Q You used the word recovery.

23 A Yes, I do.

24 Q In referring to these packages or these boxes?

25 A Yes.

2 Q Where did this recovery take place, sir?

3 A The recovery took place of all of those on
4 two separate occasions.

5 Q When was the first of those?

6 A Right at that moment. I don't recall the
7 specific date. 1974.

8 Q Do you remember a month in 1974?

9 A Like I said, it was two different occasions.
10 I believe one was, to the best of my recollection, June, and
11 the other in July, I think.

12 Q Would it refresh your recollection if I would
13 suggest March of 1974, sir?

14 A Possibly. If I could see my administrative
15 papers on it, I would be able to refresh my recollection.

16 MR. NEWMAN: Can we have those?

17 (Handing to Mr. Newman.)

18 Q This is 35000 material we were furnished by
19 the Government. Does that refresh your recollection as to
20 when the first of those records were made (handing to witness)?

21 A Yes.

22 Q And what was the date of the first recovery,
23 sir?

24 A As I stated there, it was in June.

25 Q And the second recovery, sir?

1 46

Redman-cross/Newman

2 A As I stated, in July.

3 Q And, sir, were these recoveries made as a
4 result of what you call a search of the premises at Barbey
5 Street?

6 A Yes.

7 Q Now, sir, in June or July of 1974, did you
8 search any premises at Jamaica Avenue or Herkimer Street
9 seeking any material from the Arlene Knitwear?

10 A No, sir.

11 Q Sir, in either June or July of 1974 at Pacific
12 Street in Brooklyn, where you were seeking any of the merchan-
13 dize from the Arlene Knitwear Company?

14 A No.

15 MR. NEWMAN: No further questions of this gentle-
16 man.

17 CROSS-EXAMINATION

18 BY MR. PELUSO:

19 Q Agent Redman, you stated that you went to the
20 factory at Pacific Street; is that right? 2395 Pacific Street?

21 A Yes.

22 Q And --

23 MR. NEWMAN: What are we talking about, Judge,
24 1975?

25 Q March 14, 1975; is that right, sir?

2 A Yes.

3 Q And you had a conversation with Mr. Rosenwasser:
4 is that right, sir?

5 A Yes.

6 Q And did you ask him whether or not he knew
7 anything about stolen merchandise ever being in his place
8 of business?

9 MR. LEVIN-EPSTEIN: Objection.

10 THE COURT: Sustained.

11 MR. PELUSO: Judge, may we approach the side
12 bar?

13 THE COURT: Yes.

14 (Whereupon, a side bar was held as follows):

15 MR. WALLACH: Can I speak, your Honor?

16 THE COURT: Yes.

17 MR. WALLACH: Your Honor, the last question as
18 I recollect of the prosecutor was, "Did you have a
19 conversation with Mr. Rosenwasser?" That was it. He
20 never asked him what he said. That can leave an
21 impression with the jury that the defendant said some-
22 thing, may have availed himself with the Fifth Amendment
23 or something about consciousness of guilt.

24 THE COURT: No such information was elicited.

25 MR. WALLACH: That's just the point, that all the

2 agent said -- he never asked him what he said. I
3 submit that would leave the impression with the jury --

4 THE COURT: You can't put your defense in through
5 the agent.

6 MR. WALLACH: I don't have to accept it.

7 MR. PELUSO: My objection is based on hearsay.
8 I thought the door was opened by that question.

9 MR. WALLACH: That is another point. He opened
10 the door by the question.

11 THE COURT: I don't think so.

12 MR. PELUSO: Ask him what, if anything, he said
13 to the defendant. The sole purpose, as I understand,
14 of that question, was to eliminate any question as to
15 the whereabouts of the factory. That you fellows raised
16 during the course of your cross-examination of Fleischer,
17 and to establish a location of Pacific Street as his
18 current testimony showed. He went further and asked
19 him, "Did you have a conversation?"

20 THE COURT: Yes.

21 MR. LEVIN-EPSTEIN: If it needs elaboration,
22 your Honor, I would be happy to.

23 THE COURT: No. I won't let you put your defense--

24 MR. LEVIN-EPSTEIN: Any statement that would be
25 elicited from Agent Redman as to any comment, statement

1 49

Redman-cross/Peluso

2 made by Mr. Rosenwasser at that time, would not come
3 under the hearsay rule.

4 MR. WALLACH: Judge, that's how certain we are.

5 Can we inquire of this agent the description
6 of the layout of the factory, the area?

7 THE COURT: Yes.

8 MR. WALLACH: Thank you, your Honor.

9 (Whereupon, the side bar was concluded and the
10 following transpired in open court.)

11 BY MR. PELUSO (Continuing):

12 Q Agent Redman, on the date that you went to
13 Pacific Street, you went by vehicle, I assume?

14 A I went on two occasions, both times by vehicle,
15 yes.

16 Q Now, can you tell us whether or not Pacific
17 Street is a one or two-way street?

18 A As I recall, it's a one-way street.

19 Q Would you describe where on Pacific Street the
20 factory in question is located?

21 A Yes. If you are heading in a westerly direction
22 going west, it is on the right-hand side of the street.

23 Q Would all of the buildings on both sides of
24 Pacific Street in that area be factories?

25 A As I recall, I don't think so.

1 50

Redman-cross/Peluso

2 Q And at the very next corner, going westerly,
3 at the intersection of Pacific and Sackett Street, is there
4 a big Roman Catholic church?

5 A I don't recall.

6 Q Can you describe the inside, sir, of the factory?

7 A To the best of my recollection, as you get --
8 walk in the front door, the business door of it, there's an
9 office. If you walk across the width of the room, located
10 on the far wall to the right is the area of the factory where
11 the work is done. There are long tables, a lot of equipment
12 hanging, there is a wooden floor. That is all I recall.

13 Q As you get off the elevator looking directly
14 in front of you, you say there is an office?

15 A Small office area, yes, sir.

16 Q And is there also a cutting table there?

17 A There are tables. I don't recall if they are
18 cutting tables or not.

19 Q Did you see any sewing machines in the place?

20 A I remember a lot of equipment. I don't recall
21 if there were sewing machines or not.

22 Q Did you see people working in the place?

23 A On one occasion, at least, I saw many people
24 working in the place, yes, sir.

25 Q Can you tell us what they were doing?

1 51

Redman-cross/Peluso

2 A I can't remember specific jobs they were doing.
3 They were busy working on the tables.

4 Q Can you tell us whether or not there was sewing
5 on any tables?

6 A I can't specifically recall sewing, but I remem-
7 ber there was a lot of sound, and it may possibly have been
8 the sound of sewing machines.

9 Q Now, you are telling us that you don't remember
10 what you actually saw?

11 MR. LEVIN-EPSTEIN: Object to the way the ques-
12 tion was asked; the phrasing.

13 THE COURT: I will sustain the objection. I
14 think that's what he's saying. Anyway, that's a ques-
15 tion for the jury to determine.

16 Q You don't remember whether or not people were
17 actually sewing at the tables?

18 A I don't specifically recall, no.

19 MR. PELUSO: I have no further questions.

20 MR. LEVIN-EPSTEIN: I have no redirect.

21 THE COURT: Wait a second, Mr. Wallach.

22 MR. PELUSO: I have no further questions.

23 MR. LEVIN-EPSTEIN: I have no further questions.
24 your Honor.

25 THE COURT: All right. You may step down.

2 MR. LEVIN-EPSTEIN: Your Honor, the Government
3 calls as its next witness, Ernest Haridopolos.

4 ERNEST A. HARIDOPOLOS, having first been
5 duly sworn by a Clerk of this Court, was examined and
6 testified as follows:

7 THE CLERK: State your name for the record,
8 please.

9 THE WITNESS: My name is Ernest A. Haridopolos,
10 H-a-r-i-d-o-p-o-l-o-s.

11 DIRECT EXAMINATION

12 BY MR. LEVIN-EPSTEIN:

13 Q Speaking loudly enough, s-r, so the jurors in
14 the end of the box can hear you clearly, can you tell us once
15 again what your full name is?

16 A Ernest A. Haridopolos.

17 Q Mr. Haridopolos, are you employed?

18 A Yes. I am a Special Agent with the Federal
19 Bureau of Investigation.

20 Q Agent Haridopolos, how long have you been an
21 agent?

22 A Twelve years.

23 Q Are you currently assigned to a particular
24 location?

25 A I'm currently assigned to the New York office.

2 Q Are you currently assigned there?

3 A Yes.

4 Q What is that section?

5 A Organized Crime Section.

6 Q How long have you been with the Organized Crime
7 Section?

8 A The past four years.

9 Q What section were you assigned to prior to
10 that?

11 A Yes.

12 Q What was that?

13 A Theft from Interstate Shipment, specifically
14 truck hijackings and truck violations.

15 Q Directing your attention to March 1972, were you
16 assigned to the truck hijacking squad?

17 A Yes, I was.

18 Q Directing your attention to March 28, 1972,
19 were you officially involved and assigned to a particular
20 investigation that day?

21 A Yes, I was.

22 Q What investigation was that, sir?

23 A A few days, I believe, the day earlier, there
24 was a theft of Dewer's Scotch and some bourbon from trucks.

25 Q What kind of bourbon, by the way?

2 A Wild Turkey Bourbon.

3 Q Would you briefly describe what your official
4 duties were with respect to that investigation?

5 A My specific duties that day were as a
6 surveillance agent.

7 Q What is basically a surveillance agent's duties?
8 What is his role?

9 A Make observations and report our observations
10 and gather evidence.

11 Q And on that day, were you working by yourself
12 or with other agents of the FBI?

13 A I was working with other agents of the FBI.

14 Q With whom were you working, sir, if you recall?

15 A Gary Delora, Tom Armstrong -- however, that
16 particular day I was in an automobile by myself.

17 Q I see. Well, specifically directing your
18 attention to that day, were you on a surveillance mission or
19 assignment?

20 A Yes, I was.

21 Q Approximately what time did you begin your
22 surveillance, sir?

23 A At approximately 4:00 p.m.

24 Q Where was that surveillance initiated?

25 A It was in Brooklyn, New York, and as far as I

4 1 56

Haridopolos-direct

309

2 was concerned, initiated on Powell Avenue in Brooklyn, New
3 York.

4 Q What was the subject of your observations?

5 A To make observations of a specific truck.

6 Q Can you describe that truck to the jury?

7 A Blue step-type van truck.

8 Q What is a step van truck type?

9 What does it look like?

10 A It's about eight feet long, six feet wide, like
11 a dock's type truck where cargo is carried in the back area,
12 back doors, and regular panel, and driver door.

13 Q And the color of it again was what?

14 A Was blue.

15 Q When fir the first time -- did there come a
16 time when you first saw the blue van which was the subject of
17 your surveillance?

18 A Yes.

19 Q WAS it occupied?

20 A Yes.

21 Q Can you describe the occupant to the jury?

22 A Two white males at the truck when I first
23 arrived.

24 Q Do you see either of those two white males?

25 Look around the courtroom.

5 1 57

Haridopolos-direct

2 A Yes, sir. The individual next to counsel
3 Newman, Gerald Allicino.

4 MR. LEVIN-EPSTEIN: Indicating the defendant,
5 Allicino.

6 MR. NEWMAN: So indicated.

7 THE COURT: Ladies and gentlemen, you remember
8 after the opening statement I cautioned you that a
9 portion of the Government's evidence would be only
10 admissible against Mr. Allicino, and this apparently
11 pertains to that portion of the evidence, and
12 secondly, that it would only be introduced for the
13 purpose of showing knowledge or intent in the commis-
14 sion of the crime charged in the indictment, and for
15 that purpose only. I will give you four instructions
16 on the law in this question in my charge. But, bear
17 in mind this does not go to prove the crime charged in
18 the indictment. It only, if you find the facts with
19 respect to this portion of the case to be established,
20 it only goes in on the question of knowledge and intent.
21 It doesn't go in as proof to establish the crime
22 charged in the indictment, in and of itself.

23 MR. LEVIN-EPSTEIN: May I proceed?

24 THE COURT: Yes.

25 MR. LEVIN-EPSTEIN: Thank you.

1 Q On that day when you were surveilling this
2 truck, where were you when you first saw the truck?
3

4 A I was in the FBI car just off Powell Avenue,
5 one of the cross streets.
6

7 Q What did you see then? What, if anything, did
8 the truck do?
9

10 A The truck proceeded north on Powell Avenue, and
11 I proceeded to follow it.
12

13 Q Where did it go?
14

15 A It eventually stopped at Pacific Street; 2395
16 Pacific Street.
17

18 Q I beg your pardon? 2395?
19

20 A Yes. 2395.
21

22 Q Who was driving the truck?
23

24 A An individual named Angelo Delucca.
25

Q Did you know that at the time or did you learn
that at a later time?
A

Later time.
Q

Mr. Allicino was a passenger of the truck?
A

Yes, he was.
Q

What happened after the truck approached the
vicinity of 2395 Pacific Street?
A

The truck stopped along the curb just past this
address, and Delucca and Allicino left the truck and went
35

2 into this building.

3 Q What happened then?

4 A They returned to the truck in a few minutes.

5 Delucca backed the truck onto the sidewalk so that the doors
6 corresponded with the doors of this building, under the
7 direction of Allicino.

8 Q This was something that you were observing as
9 it was happening?

10 A Yes.

11 Q Then what happened?

12 A I was observing this about a hundred feet away.
13 I subsequently left the vehicle I was in, walked up towards
14 this door and truck, observed Allicino and Delucca unloading
15 the cartons of Dewer's Scotch from this truck.

16 Q What happened then?

17 A I returned to my vehicle, reported what I saw,
18 and subsequently, Agent John Goode and myself went back to
19 where the truck was. By this time, Allicino and Delucca had
20 left this address. Delucca was driving the truck, and
21 Allicino was directing the truck into traffic on Pacific
22 Street when he stopped the truck and we identified ourselves.
23 I identified myself to Allicino, and Goode identified himself
24 to Delucca, and we advised them that they were both under
25 arrest.

1 60

Haridopolos-direct

2 Q Did you advise them of the charge?

3 A ADVISED THEM OF THE CHARGE THAT THEY WERE UNDER
4 ARREST FOR THE CHARGE OF THEFT FROM INTERSTATE SHIPMENT.5 Q Now, after Mr. Allicino was placed under arrest
6 by you, where, if any place, did you go at that point?7 A We went back to the doorway of this loft, this
8 building that they had just exited, and proceeded to advise
9 him of his rights and asked him some questions and searched
10 him.11 Q Did there come a time when you observed anything
12 within that area of the building?13 A Yes. Subsequently observed approximately fifty
14 cases of Dewer's Scotch in a little room just inside the
15 doorway of this building.16 Q Did there come a time later after this day when
17 the source or origins of the Scotch which you saw were
18 identified? Where did that stuff come from?

19 A It came from a truck theft.

20 Q Is this the same truck theft that your previous
21 testimony referred to?

22 A Yes, it is.

23 MR. LEVIN-EPSTEIN: Your Honor, I am going to ask
24 that these eight photographs be marked Government's
25 next exhibits in sequence for identification unless

1 61

Haridopolos-direct

2 there is no objection to them being offered in evidence.

3 MR. NEWMAN: No objection.

4 MR. WALLACH: We object.

5 THE COURT: They are only in regard to
6 Mr. Allicino. The jury is quite intelligent and
7 understands.

8 MR. LEVIN-EPSTEIN: Marked in evidence then.

9 Q While the clerk is marking these photographs,
10 AGent Haridopolos, on that day -- by the way, you mentioned
11 before that when you went back to your car you reported what
12 you had seen. By what means did you report it?

13 A Car radio.

14 Q To whom were you reporting?

15 A Other agents in the area that were under
16 surveillance that day.17 Q Following the arrest of Mr. Allicino that day,
18 were these cases of liquor disclosed?

19 A Yes.

20 Q During the course of the continuing investiga-
21 tion, was any of photography performed or pictures taken by
22 anybody?

23 A By -- who was?

24 Q Do you know who took the pictures?

25 A No, I don't know.

2 Q Have you had occasion during the course of your
3 investigation, and, in fact, preparation for this trial, to
4 observe and review those photographs, or some of them?

5 A Yes, I did.

6 Q Did you look at them before in my office, before
7 you came down here, just before?

8 A Yes, I did.

9 MR. LEVIN-EPSTEIN: One moment, your Honor.

10 THE CLERK: Series of photographs marked in
11 evidence as Government's Exhibits 20A to 20H inclusive.

12 MR. LEVIN-EPSTEIN: Your Honor, if it please the
13 Court, without objection from counsel, I will staple
14 these altogether.

15 (No response.)

16 Q Agent Haridopolos, I show to you what has been
17 marked Government's 20A through H, inclusive, and I ask you if
18 those are the photographs to which you just referred?

19 (Handing to witness.)

20 A Yes, they are.

21 Q Specifically directing your attention to
22 Exhibit 20G, I indicate and point your attention to the building
23 that appears in that photograph. Can you identify that
24 building?

25 A Yes. That is the building that Allicino and

1 62a

Haridopolos-direct

316

2 Delucca went into.

3 (Continued next page.)

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2 Q Is that 2395 Pacific Street?

3 A Yes.

4 Q Does there appear to be a blue step van?

5 A Yes.

6 Q Is that the truck you were surveiling?

7 A Yes.

8 Q I call your attention to Exhibit 20-F in
9 Evidence, and I ask you if that is a different view of the
10 same building?

11 A Yes, it is.

12 Q Is that a closer up view of the doorway?

13 A Yes.

14 Q When you went through that doorway -- did there
15 come a time when you observed an elevator?

16 A Yes, there was.

17 Q Do you know who was operating that elevator?

18 A Yes. There was an individual named Anthony
19 Allicino.

20 Q Did there come a time when you learned that
21 Gerald Allicino and Anthony Allicino were related in any way?

22 A Yes. They were brothers.

23 Q Directing your attention to the rest of these
24 photographs, would it be fair to say they also reflect the
25 building and the truck?

2 A Yes.

3 Q And also the stolen whisky?

4 A Yes.

5 MR. LEVIN-EPSTEIN: I have no further questions
6 of this witness.

7 CROSS-EXAMINATION

8 BY MR. NEWMAN:

9 Q Good afternoon, Mr. Haridopoulos. Just a couple
10 of questions.

11 You said that Mr. Allicino directed the truck into the
12 building. Did you mean that he showed them how to back up
13 the truck?

14 A Yes.

15 Q And you say he directed to see that the traffic
16 stopped on Pacific Street and it was safe to come out?

17 A Yes.

18 Q Now, you talked about a gentleman you learned
19 to be the brother of Gerald Allicino, Anthony.

20 A Yes.

21 Q Did you arrest him that day, yes or no?

22 A He was arrested, sir.

23 Q Did there come a time that you learned that he
24 passed away as a result of a heart attack?

25 A Yes.

2 MR. NEWMAN: Thank you very much. Good to
3 see you again.

4 MR. LEVIN-EPSTEIN: I am going to object.

5 MR. NEWMAN: I am sorry. It wasn't good to see
6 him.

7 MR. LEVIN-EPSTEIN: I would have stipulated it
8 was good to see him on Mr. Newman's part.

9 THE COURT: Mr. Newman has been around a long
10 time and knows everybody.

11 CROSS-EXAMINATION

12 BY MR. PELUSO:

13 Q Mr. Haridopolas --

14 MR. LEVIN-EPSTEIN: Your Honor, may we approach
15 the side bar. I am going to object before even one
16 question is asked. May we approach the side bar?

17 THE COURT: Yes.

18 (Whereupon a side bar discussion was held.)

19 MR. LEVIN-EPSTEIN: I am objecting to any cross-
20 examination by the defendant Rosenwasser and ask that
21 the jury be instructed that none of this evidence comes
22 in against him.

23 MR. PELUSO: Well, Judge, pictures were admitted
24 into evidence, and there is definitely a spillover as
25 to my client.

2 I think I should at least be allowed to point
3 out where the place is located. Also, we have had
4 very ambiguous language that was brought out.

5 THE COURT: What is the church?

6 MR. PELUSO: That is part of the description
7 of the area.

8 THE COURT: That's different.

9 MR. PELUSO: In addition to that language being
10 ambiguous as to the address at 2395 Pacific Street,
11 now the impression can be --

12 THE COURT: No. It's not admitted against him.

13 MR. PELUSO: I think I should make it clear to
14 the jury.

15 THE COURT: I have made it clear to the jury.
16 You can call him as your own witness. You can instruct
17 him to remain and put him on the witness stand, if you
18 wish.

19 MR. WALLACH: May we just have a moment, Judge.

20 THE COURT: Yes.

21 (Whereupon, an off-the-record conversation was
22 held.)

23 THE COURT: I am assuming, Mr. Levin-Epstein is
24 going to be resting momentarily.

25 MR. LEVIN-EPSTEIN: I will say this, your Honor,

1 that the Government will take the position that if
2 Mr. Peluso cross-examines this witness or, in fact,
3 calls him as his own witness, the door will be opened
4 wide for any inquiry that I might want to make, with
5 respect to any knowledge he may have about anything
6 that the defendant Rosenwasser --

7 MR. WALLACH: I guess we will leave the door
8 shut.

9 THE COURT: It's up to you.

10 MR. PELUSO: Judge, am I going to be allowed
11 to examine on those exhibits that were in evidence?

12 THE COURT: You will be allowed.

13 MR. PELUSO: Thank you. I will abide by your
14 Honor's ruling, and I will not examine, subject to
15 your Honor's rule.

16 (Whereupon, the following took place before the
17 jury):

18 MR. PELUSO: In view of your Honor's ruling.
19 I have no further questions of this witness.

20 MR. LEVIN-EPSTEIN: The Government has no further
21 questions of this witness.

22 Your Honor, counsel joins me in a request for
23 a short colloquy with the Court.

24 THE COURT: All right. We will take a short

1

Rosenwasser-direct/Peluso

59

2 stand.

3 S E Y M O U R R O S E N W A S S E R , having been first
4 duly sworn by the Clerk of the Court, was examined
5 and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. PELUSO:

8 Q How old are you, sir?

9 A Fifty-six.

10 Q Are you married or single?

11 A Married.

12 Q How many years have you been married?

13 A Thirty-seven.

14 Q Do you have a family?

15 A Yes.

16 Q Would you tell us how many children you have?

17 A One girl, one boy.

18 Q How old is your boy?

19 A Thirty.

20 Q How old is your girl?

21 A Thirty-five.

22 Q What does your boy do for a living?

23 A He's a writer.

24 Q What does your girl do?

25 A Housewife.

1 Rosenwasser-direct/Peluso

2 Q Have you ever been convicted of a crime, sir?

3 A No.

4 Q What type of work do you do?

5 A I'm in ladies jackets and coats.

6 Q Where do you live?

7 A 5421 Glenwood Road.

8 Q What is the name of your firm?

9 A Trecon Sportswear.

10 Q Where is that located?

11 A 2395 Pacific Street.

12 Q How long has it been at that location?

13 A Close to 30 years.

14 Q Have you ever had a factory at Hegeman Street?

15 A No.

16 Q Is Trecon Sportswear privately owned, partnership
17 or a corporation?

18 A A corporation.

19 Q And who owns stock in that corporation?

20 A Seymour Rosenwasser.

21 Q You are the sole stockholder?

22 A Yes.

23 Q Do you see the gentleman in court, Mr. Allicino?

24 A Yes.

25 Q Is he or has he ever been your partner?

2 A No.

3 Q Either in your manufacturing business or in
4 any other business?

5 A NO.

6 Q You say you have been in the coat business for
7 35 years?

8 A Yes.

Q Before that, what if anything did you do?

A During the War I was a welder.

Q And where did you work?

A In the shipyards.

Q How long did you do that?

14 A From the beginning of the War until the end of
15 the War.

16 Q Have you ever belonged to a hijacking crew or
a mob?

A NO.

Q Have you ever owned or carried a gun?

A No.

21 Q Have you ever racked up any proceeds from a
hijacking, in crime?

A No.

9 Have you ever conned anyone in your life?

A 100

1 Rosenwasser-direct/Peluso

62

2 Q Have you ever received a quantity of women's
3 knitted garments which were stolen from a motor truck, stolen
4 from Arlene Knitwear?

5 A No.

6 Q Have you ever received any stolen garments at
7 all?

8 A No.

9 Q Have you ever possessed any knitwear which was
10 stolen from Arlene Knitwear?

11 A No.

12 Q Have you ever possessed any stolen women's
13 garments at all?

14 A No.

15 Q Have you ever purchased any women's knitwear
16 which was stolen from Arlene Knitwear?

17 A No.

18 Q Have you ever purchased any stolen women's gar-
19 ments at all?

20 A No.

21 Q Have you ever conspired or agreed with Gerald
22 Allicino to commit an armed offense against the United States?

23 A No.

24 Q Have you ever conspired or agreed with Gerald
25 Allicino or any other person or persons to purchase any stolen

1 Rosenwasser-direct/Peluso

63

2 women's garments?

3 A No.

4 Q Have you ever conspired or agreed with Gerald
5 Allicino or any other person or persons to receive any stolen
6 women's garments?

7 A No, no, no.

8 Q Have you ever conspired or agreed with Allicino
9 or any other person or persons to possess stolen women's
10 garments?

11 A No.

12 Q On March 6, 1972, did you know Mr. Allicino?

13 A Yes.

14 Q How long did you know Mr. Allicino?

15 A About 25 years.

16 Q Did you know his family?

17 A Yes.

18 Q Did you know his brother?

19 A Yes.

20 Q What was his brother's name?

21 A Tony.

22 Q Did Tony work for you, sir?

23 A No.

24 Q What type of work did Tony do?

25 A Tony was an elevator operator, and I think he

1 Rosenwasser-direct/Peluso

64

2 took care of the building.

3 Q The building where your factory is located,
4 do you own or rent?

5 A I rent.

6 Q You rent the entire building, sir?

7 A No.

8 Q How much space do you rent in that building?

9 A I rent one loft consisting of I think about
10 5,000 square feet.11 Q On March 6, 1972, were you the only tenant in
12 that building?

13 A No.

14 Q What if anything was your relationship with
15 Mr. Allicino on March 6, 1972?

16 A Friends.

17 Q Do you know where he lives?

18 A Yes.

19 Q Tell us where he lives.

20 A Across the street from the factory.

21 Q Can you describe the block Pacific Street on
22 which your factory is located?23 A One-way street; on the corner is a big church,
24 right next to my building is the rectory; across from the
25 rectory is a big church, across the street from my building

1 is all residence.

2 Q Was it the same way on March 6th, 1972?

3 A It's been that way for the last 35 years, that
4 I know.

5 Q What floor in 2395 Pacific Street is your loft
6 located?

7 A First floor.

8 Q How do you get to your office or your factory?

9 A I walk up the steps.

10 Q Is there also an elevator that goes to your
11 factory?

12 A Yes.

13 Q Can you describe where that elevator is located
14 in the building?

15 A We have two entrances, one is 2395 Pacific
16 Street; one is 2401 Pacific Street, and between the two
17 entrances there is an elevator. The elevator takes care of
18 both parts of the building.

19 Q You say it takes care of both sides of the
20 building. Explain that to the jury.

21 A Well, when the elevator should go up to my floor,
22 on the side, that's 2395 Pacific Street. On 2401 there is also
23 a door that the elevator leads to the other side of the
24 building and it goes up all the way to the top.

2 MR. PELUSO: May I have these marked for
3 Identification?

4 THE COURT: Mark them.

5 MR. LEVIN-EPSTEIN: Mark them in evidence.

6 MR. PELUSO: I'll offer them in evidence.

7 THE COURT: All right.

8 THE CLERK: Twenty-eight photos received in
9 Evidence as Defendant's Exhibit A-1 to 28.

10 MR. PELUSO: Would your Honor want me to con-
11 tinue?

12 THE COURT: If you can go on, it would be help-
13 ful.

14 BY MR. PELUSO:

15 Q On March 6, 1972, or on March 7, 1972, did you
16 know or meet the gentleman who testified here in court,
17 Paul Fleischer?

18 A Never saw him in my life.

19 Q On March 6, 1972, or March 7, 1972, did you know
20 or meet a man by the name of Gerald Collins, who is also known
21 as Rebel?

22 A I don't know.

23 Q On March 6, 1972, did you know or meet a man
24 by the name of Paul Flammia, also known as Porkchop?

25 A I don't know these people.

1 Q On March 6 or 7, 1972, did you know or meet a
2 man by the name of Joseph Alloria, also known as Baldy?

3 A No.

4 Q On March 7 or 7, 1972, did you know or meet a
5 man by the name of Rocco Mastrangelo?

6 A No.

7 Q On March 6th, 1972 or March 7, 1972, did you
8 know or meet a man by the name of Charlie Peters, who was
9 also known as Fat Charlie?

10 A I don't know any of these people.

11 Q Did you ever in your life have an argument with
12 any of these people?

13 A I never knew them. I never had no argument.

14 Q Mr. Rosenwasser, what time do you report to work
15 in the morning?

16 A 6:30.

17 Q What time do you leave your factory?

18 A About a quarter of four, 4:30.

19 Q Between 6:30 in the morning and the time you
20 leave in the afternoon, what, if anything, do you do at the
21 factory?

22 A I prepare the work for the operators.

23 Q Explain to the jury what that means.

24 A I take Fannie Extract, who puts in the sleeves,

1 I would give her like a jacket like you are wearing, a body,
2 back, she would put the sleeves into that jacket; another
3 operator I would give that pocket that that gentleman is
4 wearing, I would give another operator that pocket to put in;
5 that gentleman wearing that green jacket, I would give another
6 operator a back to make two pants, two parts of a back; what that
7 young lady's wearing, I would give an operator a front to make
8 and so on and so forth, all around the factory, and naturally
9 I would watch that the work is done.
10

11 Q Do you do any other work aside from what you
12 just described?

13 A Yes, I sit on the machine and work also.

14 Q Who does the cutting in your place of business?

15 A My place of business, there is no cutting. We
16 get work all cut, trimmed, and we assemble it and put it
17 together.

18 Q Do you know what a cutting table is?

19 A Yes.

20 Q Describe a cutting table for the jury.

21 A A cutting table would be from here to about
22 here and about 50 inches, the width.

23 Q When you say --

24 A From the end of the wall to about here (indicat-
25 ing).

2 Q To the front of the witness stand?

3 A About 50 or 62 inches is the width. It would be
4 two rollers on the cutting table, where they roll goods up
5 and that, and there would be a long line where they have the
6 cutting machine, long electrical line where it just slides
7 through; that would be a cutting table.

8 Q Do you have a cutting table in your place of
9 business?

10 A No.

11 Q On March 6 or 7, 1972, did you have a cutting
12 table?

13 A My place is too small.

14 Q Did you have a cutting table on March 6 or 7,
15 1972?

16 A Never had a cutting table.

17 Q Can you describe your factory, if you were stand-
18 ing at the entrance to the factory coming off the elevator,
19 what would you see?

20 A As you come off the elevator your eyes would
21 focus right into the office; on the side of the office you
22 would see a few machines; as you would turn to the right you
23 would see girls by the table cleaning all the garments.

24 Q When you say a few machines, what type of
25 machines would you see?

Rosenwasser-direct/Peluso

70

A You would see blind stitch machine; you would see a sewing machine, and that's what you would see.

4 Q How many sewing machines do you have your place
5 of business on March 6 and 7 of 1972?

A 24 -- about 24 sewing machines and about 6
7 special button sewing, blind stitch -- that's a special
8 machine.

9 Q About how many sewing machine operators did you
10 have working on March 6th and 7th of 1972?

A About 20, 22.

12 Q And were they working sewing during the morning
hours of March 6, 1972?

A They come in the morning, they sew all day long.

8. Your work is piece workers or time workers?

16 A The operators are piece workers; the floor
workers are time workers.

18 Q Would you explain to the jury the difference
between a piece worker and a time worker?

A The time worker works by the hour; a piece
20
21 worker, whatever they make, they earn. In other words, if a
22 girl puts in 100 pairs of sleeves a day, she gets paid for
23 100 pairs of sleeves a day. Where a time worker will clean
24 a jacket, punch a card in the morning and at night and she'll
25 punch a card at 12, 12:30, when she starts back. She gets

1 paid hourly; a piece worker doesn't get paid hourly.

2
3 Q Now, the sewing machines that you had in your
4 place of business on March 6th and 7th, are those the same
5 sewing machines that are there today?

6 A Yes.

7 Q And on March 6th and 7th of 1972, when those
8 machines were in operation, were they noiseless or did they
9 make noise?

10 A They make noise.

11 Q By the way, how many coathangers do you have
12 that hang from your ceiling in your place of business?

13 A We don't have any coathangers hanging from the
14 ceiling.

15 Q On March 6, 1972?

16 A We don't have any, we never did.

17 (Continued on next page.)

18

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HL/ffe

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Reel 3 2 Q How many pressing machines do you have in your
3 place of business?

4 A About six.

5 Q How many did you have on March 6, 1972?

6 A Same amount.

7 Q How many pressers, operators, do you employ for
8 these machines?

9 A One, two.

10 Q On March 6, 1972, did you employ any operators
11 for the pressing machines?

12 A It's a very coincidental time, for the simple
13 reason at that time we had to be working on what we call wet
14 look. A wet look coat doesn't consist of any pressing whatsoever.
15 I think these young ladies they know what they are.

16 MR. LEVIN-EPSTEIN: I'll object to that. I
17 assume the answer is no.

18 THE COURT: Strike it out.

19 Q During the period, the month of March 1972, how
20 many men were delivering merchandise at your place of business?

21 MR. LEVIN-EPSTEIN: Objection, leading question.

22 THE COURT: I'll allow it.

23 A The same men that come in every day.

24 MR. LEVIN-EPSTEIN: Objection.

25 THE COURT: Sustained, strike it out. Answer the

2

1 Rosenwasser-direct

2 question. How many men were making deliveries to your
3 plant on March 6, 1972? One, two, three, fifteen,
4 twenty, twenty five?

5 THE WITNESS: I'm sorry; three, three or four.

6 Q During say the past ten years, how many men were
7 making deliveries and pickups at your place of business?

8 MR. LEVIN-EPSTEIN: Objection, irrelevant.

9 THE COURT: Sustained.

10 Q Has anyone ever made a pickup or delivery other
11 than the men you testified about earlier?

12 A I didn't hear you.

13 Q Has anyone made a delivery of merchandise or
14 boxes to your place of business other than the three or four
15 men about which you have testified earlier?

16 A No.

17 Q Did Mr. Fleischer on March 6 or 7, 1972 or at
18 any time make any deliveries to your place of business?

19 A I told you I don't know the man. I never saw
20 the man before in my life.

21 Q Did any of the others that he mentioned
22 Mastangelo?

23 A I don't know any.

24 Q Charlie Peters make any deliveries to your place
25 of business on March 6 or 7, 1972?

2 A I never saw them, never heard of them.

3 Q Did they make deliveries to your place of
4 business?

5 A No.

6 Q Did they pick up any cartons or boxes on the 7th
7 from your place of business?

8 A No.

9 Q On March 6th or 7th 1972, did anyone in your
10 place of business tell you or say in your presence, "I'll kill
11 that Jew if he doesn't take the load" or words to that effect?

12 A NO.

13 MR. PELUSO: May I approach the witness?

14 THE COURT: Yes.

15 Q (continuing) I show you what has been marked in
16 evidence as Defendant's Exhibit A1 to 28 and I ask you if --

17 Did you cause those pictures to be taken, sir?

18 A Yes.

19 Q When were those pictures taken?

20 A Saturday

21 Q Were you present when they were taken?

22 A yes

23 Q Were those pictures -- please look at them. Are
24 those pictures a fair and accurate representation of your
25 factory?

1 Rosenwasser-direct

75

2 A Yes.

3 Q And the block, Pacific Street, the block where
4 your factory is located as of March 6 and 7, 1972?

5 A Yes.

6 Q Mr. Rosenwasser, are there any windows in your
7 factory?

8 A Yes.

9 Q Tell the jury approximately how many windows
10 there are in your factory?

11 A Approximately there are 22 to 23 windows.

12 Q And where are they located, sir?

13 A Well, I would say wherever all the operators
14 are, all around the front, all around the side of the building,
15 that's where all the operators sit, in the front.16 Q I show you what's been offered and accepted as
17 Government's Exhibit 20 in evidence.

18 (Witness looking at photograph.)

19 THE COURT: The gentleman in the rear seat who
20 has his hat on, please take it off.21 Q Mr. Rosenwasser, after looking at Government's
22 Exhibit 20 in evidence, I direct your attention specifically
23 to the picture which shows some cases of liquor.

24 Is that a picture of your loft?

25 A No.

2 Q Can you tell us where at premises 2395 Pacific
3 Street that picture was taken, if you know, sir?

4 A I don't see anything. All I see is boxes.

5 Q Are you familiar with the area in the vicinity
6 of the elevator at 2395 Pacific Street?

7 A Yes.

8 Q Now, is that area used solely and exclusively by
9 you or do you use that with the other tenants in the building?

10 A I use that with the other tenants in the building.

11 Q Directing your attention to the picture which
12 shows the boxes of liquor --

13 A Yes.

14 Q Would that be a fair and accurate representation
15 of the area, the area in the vicinity of the elevator?

16 A I don't see no elevator. All I see is boxes.

17 Q Is it your testimony, sir, with regard to that
18 picture you don't know where that picture was taken?

19 A This picture could be taken anywhere.

20 Q Is there anything about that picture that you
21 recognize -- I'm talking about the top picture?

22 A This picture?

23 Q Yes.

24 A All I see is boxes. I see nothing else.

25 Q Do you recognize any of the other boxes in that

1 group of Government Exhibit 20, sir?

2 A Yes, I do.

3 Q Would you show me which pictures in that group
4 you recognize?

5 A This is the picture that we are in.

6 Q That I take it is Government Exhibit 20G.

7 A Do you recognize any other pictures?

8 Q This is the elevator.

9 A At Pacific Street?

10 A Right.

11 Q That I take it is 20F?

12 A This is the same picture as the elevator.

13 Q 20E?

14 A This I don't know; this is a truck.

15 Q Do you recognize --

16 A The top I recognize as the building that we rent;
17 this is the opposite side of our building. This is not the
18 factory.

19 Q That's 20D. Do you recognize 20C?

20 A This is our building.

21 Q Do you recognize 20C?

22 A This is our building.

23 Q Do you recognize 20B, sir?

24 A This could be any place -- and this could be

2 any place.

3 Q The two that you say could be any place, 20B and
4 20A could be any place, and I take it 20H.

5 Judge, I pass Defendant's Exhibit A1 through 28
6 amongst the jurors.

7 THE COURT: Yes.

8 Q How long have you been at 2395 Pacific Street?

9 A I would say close to 30, 35 years.

10 Q Do you know how long that church and that rectory
11 which adjoins your building has been there?

12 A Longer than me. The rectory hasn't been longer
13 than me, the church has been.

14 MR. PELUSO: Judge, shall I wait or proceed?

15 THE COURT: Proceed.

16 Q You heard Mr. Fleisher testify about meeting you
17 at your place of business on March 6th?

18 A Yes.

19 Q And about Charlie Peters screaming, "I'll kill
20 that Jew" and I believe there was a curseword in there --
21 "If he doesn't take the load --

22 A I heard it.

23 Q Did that happen, sir?

24 A No.

25 Q Did you commit any of the acts about which

Mr. Fleisher testifies that you committed on March 6th or 7th of 1972?

A I never committed a crime in my life.

MR. PELUSO: No further questions.

THE COURT: Mr. Newman, do you wish to ask any questions?

MR. NEWMAN: I have no questions.

MR. LEVIN-EPSTEIN: I have a few, your Honor.

CROSS-EXAMINATION

BY MR. LEVIN-EPSTEIN:

Q Good afternoon, Mr. Rosenwasser. There is no doubt, Mr. Rosenwasser, that on March 3rd, 1972 a truck belonging to Arlene Knitwear --

MR. PELUSO: I'll object to that.

THE COURT: I haven't heard a question, please.

MR. PELUSO: I anticipated.

THE COURT: If he knows it.

Q Is there any doubt in your mind, Mr. Rosenwasser, whether a truck belonging to the Arlene Knitwear Company was hijacked at point of gun on March 3rd, 1972?

A I don't know anything about it.

Q Did you hear Mr. Fleisher testify with respect to that hijacking?

A Yes.

2 Q Is it your testimony that you don't know whether
3 he was telling the truth about that or not?

4 A I don't know the man.

5 Q Is that your testimony?

6 A That's right.

7 Q You have never met Paul Fleisher before?

8 A No.

9 Q And you never had any contact with Paul Fleisher
10 before?

11 A No.

12 Q And you have never heard the name Paul Fleisher
13 before as it relates to this case?

14 A That is correct.

15 Q Based upon what you know, Mr. Rosenwasser, was
16 Mr. Fleisher lying when he said the truck was hijacked?

17 MR. PELUSO: Objection.

18 THE COURT: I'll sustain that. He said he doesn't
19 know anything about what he says.

20 Q There is no doubt that you are the tenant at
21 2395 Pacific Street; right?

22 A Yes.

23 Q No doubt about that?

24 A Right.

25 Q And there is no doubt that the tenancy that you

1 Rosenwasser-cross/Levin-Epstein 81

2 hold is a first floor loft; is that right?

3 A Yes.

4 Q There is no doubt about that?

5 A Yes.

6 Q And there is no doubt at that loft at 2395 Pacific
7 Street you are in business; right?

8 A Yes.

9 Q And there is no doubt that in that business you
10 manufacture ladies garments; is that right?

11 A I contract -- I contract, I'm not a manufacturer.

12 Q Can you answer my question yes or no?

13 A No.

14 Q You cannot answer my question yes or no?

15 A I don't understand the question.

16 Q Is it not a fact at 2395 Pacific Street during
17 the course of your business, you assemble or manufacture ladies
18 garments, yes or no?

19 A I assemble ladies garments.

20 Q Is there a difference between assemble and
21 manufacturing as you use the term?

22 A Yes, there is.

23 Q But there is no doubt that you make a living by
24 preparing ladies garments?

25 A Yes.

1 Rosenwasser-cross/Levin-Epstein

2 Q In some manner?

3 A Yes.

4 Q No doubt about that?

5 A No.

6 Q And there is no doubt in your business at 2395
7 Pacific Street the physical plant there contains an elevator?

8 A Yes.

9 Q You heard Mr. Fleisher testify about that didn't
10 you?

11 A Go ahead; yes.

12 Q Was he lying then?

13 A He was never in that building. He lied all the
14 way through. He lied -- everything he said he was a liar.

15 Q You are positive?

16 A Yes.

17 Q There is no doubt in your mind?

18 A No doubt in my mind.

19 Q When Mr. Washington testified that the truck was
20 rented on March 6 of 1972, was he lying about that?

21 A I don't know who he is.

22 MR. NEWMAN: Your Honor --

23 Q My mistake. Mr. Fleisher. May the record be
24 clear. Was Mr. Fleisher lying about that truck?

25 A Mr. Fleisher lied all through the testimony.

1 Q He lied about that?

2 A I don't want to look at nothing. He lied at
3 everything.

4 Q And Mr. Fleisher said that a telephone call was
5 made on March 3rd 1972 from Air Freight Haulage to New Jersey,
6 he was lying about that?

7 A I don't know anything about it.

8 Q When Mr. Fleisher testified that a return call
9 was made from New Jersey to Air Freight Haulage in New York,
10 was he lying about that?

11 A I don't know anything about that.

12 MR. NEWMAN: I'll object to this. May we approach
13 the side bar?

14 THE COURT: I'll sustain it to the extent that
15 he doesn't know. Don't question him.

16 MR. NEWMAN: May I approach the side bar on
17 another issue having to do with those exhibits?

18 THE COURT: Yes, put the exhibits back on the
19 table. Be seated, gentlemen.

20 Q Mr. Fleisher testified as you come out of the
21 elevator the first thing you see is the office. Was he lying
22 about that?

23 MR. PELUSO: Objection, sir.

24 THE COURT: It's the jury's recollection what he

1
2 testified to and what he didn't testify to.

3 Mr. Levin-Epstein, I'm not so sure that was the
4 testimony but you may ask the question.

5 Q You may answer.

6 A I don't know what he said.

7 Q Were you sitting here?

8 A Yes.

9 Q Did you hear everything he said?

10 A I can't remember everything he said.

11 Q Do you recall Mr. Fleisher testifying that as
12 you leave the elevator and look to the right you see the sewing
13 machines?

14 A I don't know if he said he saw the sewing machines.

15 Q Approximately how many ladies garments either
16 assembled or in the process of being assembled pass through
17 your place of business, say the last one year?

18 MR. WALLACH: The crucial date.

19 THE COURT: In the year 1972.

20 Q In the year 1972, to the best of your recollection.

21 A I can't answer.

22 Q Would it be fair to say a thousand garments were
23 in and out?

24 A More.

25 Q Five thousand.

1

Rosenwasser-cross/Levin-Epstein

85

2

A Are you talking about the year? The whole year?

3

Q The whole year.

4

A Too hard to answer that.

5

Q Would it be fair to say more than five thousand?

6

A Yes.

7

Q More than ten thousand?

8

A Yes.

9

Q More than a hundred thousand?

10

A I can't answer.

11

Q Is it more --

12

A I can't answer. I can't remember. It's impossible to know.

14

Q Would it be fair to say that many, many garments?

15

A Yes.

16

Q So some similar to these?

17

A I don't work on that stuff.

18

Q But similar to these?

19

A Nothing like that.

20

Q No resemblance?

21

A No.

22

Q Is it your testimony in 35 years of business you never put together or manufactured in your place of business a lady's top?

25

A No.

Q Is it your testimony that in those 35 years of business you never put together a blouse such as that marked Government's Exhibit 12A in evidence; that is your testimony?

A I can't make that stuff.

Q Now, in the 35 years or so that you have been in this business, how long did you say you had been at 2395 Pacific Street?

A About 35 years.

Q Would it be fair to say the whole time you have been in the business has been at that location?

A Yes.

Q And you worked there regularly?

A Yes.

Q Everyday?

A More or less.

Q Every weekday more or less?

A Yes.

Q Take Saturdays and Sundays off?

A Go ahead.

Q Regular workday?

A Yes.

Q About 8:00 in the morning, 5:00 in the evening?

A Go ahead.

Q Is that correct, sir, yes or no?

128

1 Rosenwasser-cross/Levin-Epstein 87

2 A Yes; unless we are slow. If we are slow, we
3 are not working.

Q There are occasions when you don't work?

5 A Yes.

6 Q On March 6, 1972, there's no doubt that you were
7 working on that day;

8 A We were working.

10 A I was working.

11 Q There is no doubt that you were working at that
12 location; right?

13 A Right.

14 Q And you were present there; right?

15 A Yes.

Q And you were supervising the operation; right?

17 A Yes.

18 Q Among other things supervision of the operators
19 themselves, the operators on the machines; is that correct?

29 A Yes.

21 Q Among other things, the supervision of deliveries
22 that were made; is that correct?

23 A Yes.

24 Q Are you sure of that?

25 A Yes.

1

Rosenwasser-cross/Levin-Epstein

88

2 Q There is no doubt in your mind?

3 A No.

4 Q So if a delivery had been made who would have
5 been responsible for supervising it, Mr. Rosenwasser?

6 A Me.

7 Q How much noise do the sewing machines make as
8 best you can describe that? Would it be fair to say -- Let
9 me ask you this question -- can you answer that question?10 A I can't tell you how much noise. I can't make
11 the noise to tell you how much noise it makes.12 Q Can you answer this question. If I were talking
13 to you in the tone of voice I'm talking from the distance we
14 are now talking, would the noise in the building going at a
15 normal rate, would you have difficulty hearing me?

16 A No.

17 Q You wouldn't have any difficulty hearing me?

18 A No.

19 Q So it's not a lot of noise; is that a fair
20 statement?21 A Your voice happens to be very loud so the machines
22 could be louder and your voice is very loud. I can hear you
23 from anyplace.

24 Q Can you hear me now, Mr. Rosenwasser?

25 A You don't talk that way all the time.

430

1 Rosenwasser-cross/Levin-Epstein

89

2 Q On the day of March 6, 1972 who was working in
3 the shop, as best you can recall?

4 A Mostly all the operators, myself.

5 Q Anybody else?

6 A That's all; usual run of everyday work.

7 Q The question was, who else if anyone, was working.

8 A I'm telling you.

9 Q The answer is nobody else?

10 A I don't know what you mean "nobody else."

11 Q I'll try and rephrase my question.

12 ON March 6, 1972, besides yourself and as you
13 describe it, the usual number of operators was there; anyone
14 else working, sir?

15 A Floor help.

16 Q Floor help. Who is that?

17 A Like the woman that was here at first Vincenza
18 Iannello.

19 Q And she's a cleaner?

20 A That's right. That's floor help.

21 Q Have you ever been in Mr. Allicino's home?

22 A No.

23 Q Never been in Mr. Allicino's home?

24 A No.

25 Q Right across the street from your factory?

1 A No.

2 Q In 25 years you never walked across the street
3 to his house?

4 MR. WALLACH: Excuse me. Objection. May I
5 voice an objection, if your Honor wants a reason, it's
6 asked and answered. I believe more than once.

7 THE COURT: Overruled. You may answer the
8 question.

9 A Let me hear it again.

10 THE COURT: In 25 years you have never been
11 across the street to his house?

12 THE WITNESS: I don't know what he means in the
13 house, just to knock at the door or to go in and have
14 coffee?

15 Q Has there ever come a time in 25 years that you
16 have knocked on Mr. Allicino's door?

17 A Yes.

18 Q Did there ever come a time during those 25 years
19 after knocking on the door you went through the door?

20 A Yes.

21 Q Would it be fair to say that you have visited at
22 Mr. Allicino's home?

23 A The question is not put right. I don't know what

1 Rosenwasser-cross/Levin-Epstein

91

2 you mean in his house. I can't explain it to you. In other
3 words, one time I had to go away I asked him for a shirt, if
4 that is what you mean going to his house -- one time I asked
5 him to come out and help me fix a motor; is that what you mean,
6 going in his house?

7 Q Mr. Allicino ever work for you?

8 A Yes.

9 Q In what capacity?

10 A A presser.

11 Q And how long did Mr. Allicino work for you as a
12 presser?

13 A He worked about twenty some odd years ago, maybe
14 for a year or two, I don't know.

15 Q Approximately when did he work?

16 A I told him about 20 years ago.

17 Q Would it be fair to say he worked approximately
18 1956?

19 A I don't remember the year. I told you about 20
20 years ago.

21 Q And that's 1956?

22 A Could be.

23 MR. LEVIN-EPSTEIN: I ask the Court to take
24 judicial notice of the fact.

25 THE COURT: Yes.

1
2 Q How long did Mr. Allicino work for you approxi-
3 mately 20 years ago?

4 A Maybe about a year or so.

5 Q Is it possible that he worked for you into 1957?

6 A That's 20 years ago. I really can't give you a
7 true description of how long he worked.

8 Q Is it possible Mr. Allicino worked for you in
9 excess of one year?

10 A You are asking me the same question. I have to
11 give you the same answer. I can't remember that far back, and
12 I don't remember how long he worked for me at the time.

13 Q When was the last time Mr. Allicino worked for
14 you?

15 A That was the last time.

16 Q 1956 or 1957; any doubts in your mind about those
17 dates?

18 MR. WALLACH: Objection. The witness has
19 answered this question and has --

20 THE COURT: I'll overrule the objection.

21 Q You may answer the question.

22 A What's the question?

23 Q Any doubt in your mind about the date on the last
24 time Mr. Allicino worked for you?

25 A I told you the time he worked for me, after that

1 Rosenwasser-cross/Levin-Epstein 93

2 I can't answer.

3 Q Isn't it a fact, Mr. Rosenwasser, that Mr. Allicino
4 has worked for you on other occasions?

5 A No.

6 Q It's not a fact?

7 A No.

8 Q I beg your pardon. Finish your answer.

9 A He would help me.

10 Q When Mr. Allicino worked for you 20 years ago
11 you paid him a salary?

12 A Yes.

13 Q How much did you pay him?

14 A I don't remember.

15 Q Did you pay him \$100 a day?

16 A I don't remember.

17 Q Did you pay him?

18 A I don't remember.

19 Q Did you pay him on a time basis or a piece basis?

20 A A time basis, I think.

21 Q On a time card?

22 A I don't remember. It's too far back.

23 Q So in fact, if he worked on a time basis there
24 would be a record of his employment, wouldn't there, Mr.
25 Rosenwasser?

1 Rosenwasser-cross/Levin-Epstein

94

2 MR. WALLACH: Objection.

3 THE COURT: I'll allow it.

4 Would there be a record?

5 THE WITNESS: I wouldn't say that.

6 THE COURT: There is a record.

7 THE WITNESS: I would know when he would come
8 and I would know when he would go.

9 Q How would you know that?

10 A Because I'm in the place all day long and I know
11 when the man starts and when the man goes home.

12 Q Do you mean to tell this jury when someone worked
13 on a time basis in your place of business, no record is kept?

14 A I didn't say that.

15 Q Is that your testimony?

16 A I didn't say that.

17 THE COURT: He said that's not his testimony.

18 Q Would it be fair to say in some cases that a
19 time worker --

20 A You asked me about Gerald Allicino. I gave you
21 the answer. Do you want to ask about somebody else, ask me.

22 Q Would it be fair to say in some cases of a time
23 worker a record is kept and in some cases, a time worker, a
24 record is not kept; is that a fair statement?

25 A No, I don't understand it.

1 Rosenwasser-cross/Levin-Epstein

95

2 Q Isn't it a fact that with some of your employees
3 they punch a timecard?

4 A I don't know what you mean by some.

5 Q Not all?

6 A Time workers?

7 Q Sir?

8 A Time workers punch a time clock.

9 Q Everyone of them?

10 A Yes.

11 Q Including Gerald Allicino; yes or no, if you can
12 answer the question.

13 A Are you going back 20 years?

14 Q Yes, sir.

15 A I told you before Gerald Allicino didn't punch
16 a timaclock.17 Q Would you care to change your testimony at this
18 time?

19 A No.

20 MR. PELUSO: I'll object to that.

21 THE COURT: I'll overrule it.

22 Q Would it be fair to say, Mr. Rosenwasser, that
23 for the people that you employ who are on a time record, with
24 the exception of Gerald Allicino, there is a time record?

25 A Yes.

1
2 Q Everybody who works on a time basis except for
3 your co-defendant, Gerald Allicino, you have a time record?

4 MR. NEWMAN: Objection to the form of the
5 question.

6 MR. WALLACH: Objection.

7 THE COURT: That's a fair statement.

8 Q IS that a fair statement?

9 A Yes.

10 Q It is a fair statement?

11 A I didn't understand you.

12 Q I'll rephrase it.

13 Would it be fair to say then that every time
14 worker that you employ there is a record with the exception of
15 Gerald Allicino?

16 MR. NEWMAN: Judge, I object to the form of the
17 question, it's stated in the present, "everyone you
18 employ."

19 THE COURT: Employed, he said.

20 Q I beg your pardon -- have ever employed?

21 A At that particular time he didn't have a time
22 card.

23 Q But you gave time cards to others?

24 A To everybody.

25 Q Except him?

Rosenwasser-cross/Levin-Epstein 97

2 A At that particular time.

3 Q So there was no record of him having worked for
4 you in 1956?

5 A And '57.

6 MR. NEWMAN: Objection to the form of the question.

7 It assumes that the only record he keeps --

8 THE COURT: He could answer.

9 Q Was there any other record that you kept that
10 showed that Mr. Allicino worked for you at that time?

11 A Yes, he got paid.

Q Was there any other records was my question.

13 A I have my payroll.

Q And can you produce the payroll for 1956. '57?

15 A I don't know if I can find it.

16 Q Directing your attention to the time when Mr.

17 Allicino did work for you, to the best of your recollection,
18 how much money did you pay him?

19 MR. NEWMAN: Objection, irrelevant. 20 years ago.

20 THE COURT: Overruled.

21 A I don't remember.

22 Q Was it --

23 A I don't remember. Don't tell me 120, 30, 40, I
24 don't remember.

25 Q Would it be fair to say that you paid him in

2 excess of \$100 a week?

3 MR. WALLACH: I'll object to the prosecutor at
4 this time -- to the Government prefacing every question
5 practically all with, "would it be fair to say". This
6 is inviting a debate. This is not a question of
7 fairness.

8 THE COURT: There's nothing wrong with that form
9 of the question. Overruled.

10 MR. WALLACH: I further object on the grounds
11 that these questions had been asked and answered. I
12 don't want to make a speech. They have been asked and
13 answered, your Honor.

14 THE COURT: Go ahead, Mr. Levin-Epstein.

15 Q Read back the last question.

16 (Whereupon last question was read.)

17 A I don't remember.

18 Q Have you ever told anybody what you paid Mr.
19 Allicino?

20 MR. WALLACH: I'll object to that. May we step
21 up?

22 THE COURT: Excluding your lawyers, have you told
23 anybody?

24 Q My question was: in substance, have you ever
25 told anybody outside this courtroom with the exception of

2 | your attorneys what you paid Mr. Allicino?

3 A I don't remember. You're going back 20 years.

4 Q At any time?

5 A I can't remember 20 years.

6 Q Can you remember ten years?

7 A Ask the question.

8 Q Did you ever tell anybody that -- withdrawn.

9 MR. WALLACH: Same objection. This is the same
10 thing that I just objected to, your Honor.

11 THE COURT: I have no trouble with that question.

12 MR. WALLACH: Respectfully except.

13 Can we step up a second, your HOnor?

14 THE COURT: NO.

15 Q Mr. Rosenwasser

16 any other occasion that Mr. Allicino worked for you at a time
17 other than 20 years ago?

18 A Repeat that. I don't understand that.

19 (Whereupon the question was reread.)

20 MR. WALLACH: Acknowledge my objection.

21 THE COURT: He said excluding your attorneys.

22 A All I can tell you he worked for me 20 years ago.
23 he got paid. That's all I know.

Q That's the best of your recollection?

25 A Yes.

1 Rosenwasser-cross/Levin-Epstein 100

2 Q And you never told anybody anything else?

3 MR. WALLACH: Objection on the grounds that
4 silence has no probity.

5 THE COURT: You are overruled.

6 Did you ever tell anybody other than your attorneys
7 that Mr. Allicino ever worked for you at any other time?

8 THE WITNESS: He didn't work for me at any other
9 time.

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11 (Continued on next page.)

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1 Rosenwasser - cross

2 Q There is no doubt in your mind as to that?

3 MR. WALLACH: Objection. This is repetitive.

4 THE COURT: No. I'll allow it.

5 Who was your landlord?

6 THE WITNESS: Buraldo.

7 THE COURT: Who are the principals?

8 THE WITNESS There are a few agents but they
9 died.

10 THE COURT: Who was the principal in Buraldo
11 Realty?

12 THE WITNESS: Right now?

13 THE COURT: Then.

14 MR. LEVIN-EPSTEIN: I would ask this document
15 be marked Government's exhibit X in sequence for iden-
16 tification.

17 THE CLERK: One document marked for identifica-
18 tion as Government's exhibit 22.

19 Q Mr. Rosenwasser, have you ever been called upon
20 to testify in a previous mater relating to Mr. Allicino?

21 A Yes.

22 Q At that time you testified, did you not, under
23 oath?

24 A Yes.

25 Q And is that the proceeding where you testified

2 THE COURT: All right, gentlemen, step up.

3 (Whereupon a side bar conference was held.)

4 MR. NEWMAN: I want to know where he's going with
5 this.

6 THE COURT: I don't know. I assume you are
7 going to object.

8 MR. LEVIN-EPSTEIN: What is the ground for the
9 objection?

10 MR. NEWMAN: I was just anticipating where he's
11 going. Is he going through the other motion to suppress?

12 MR. LEVIN-EPSTEIN: No.

13 MR. NEWMAN: I'll ask for an offer of proof.

14 MR. LEVIN-EPSTEIN: I'm offering this evidence
15 to show the relationship between the defendants and to
16 show that on prior occasions this witness has testified
17 on his behalf under oath.

18 MR. NEWMAN: I have no problem with that. I
19 don't know about my colleagues.

20 MR. WALLACH: He testified as a witness in the
21 present hearing, this is no way within the realm of
22 cross examination unless they are going to show his
23 prior --

24 THE COURT: He testified to Mr. Allicino being
25 employed by him over a number of years --

3 1 MR. LEVIN-EPSTEIN: I'll make it very clear to
2 the jury.

3 MR. NEWMAN: Subpoenaed him. Testified as to
4 the physical layout, the area where the

5 THE COURT. Was this before me?

6 MR. LEVIN-EPSTEIN: No, it was Judge Constantino
7 in 1973.

8 THE COURT: He testified in a prior hearing.

9 If he said something inconsistent here --

10 MR. LEVIN-EPSTEIN: To make it easy, I'll forego
11 the whole line of questioning.

12 MR. PELUSO: Do you have testimony that he
13 testified differently. That's what I mean, he did this
14 with the police officer.

15 MR. LEVIN-EPSTEIN: Now, you have the witness on
16 the stand and he could be redirected.

17 THE COURT: At the moment all he's asking him is
18 whether he ever told anybody that, anything different
19 apart from you two gentlemen about his employment of
20 Allicino.

21 MR. PELUSO: I wouldn't allow the comment on that.

22 MR. WALLACH: In regard to what you just said,
23 I want to suggest to your Honor there is a United States
24 Supreme Court case decided, I believe, last June, I
25 forgot the name of it, where a defendant was arrested

1 and charged with robbery, whatever it was; he was given
2 his Miranda right and remained silent. He took the
3 stand and testified as to an alibi, the Government said,
4 "Did you ever tell this ... a policeman" -- Supreme Court
5 of the United States didn't go into constitutional law,
6 it merely said matter of supervisory function of the
7 Supreme Court, silence on prior occasions by a witness
8 or an accused has no probity and it is not evidence.

9 MR. PELUSO: He wants to leave the stand to get
10 a drink of water. I'll make one other request.

11 MR. LEVIN-EPSTEIN: I'm about to show that he
12 has made a prior statement.

13 MR. PELUSO: That's what we are going to have?

14 MR. LEVIN-EPSTEIN: May I proceed, your Honor?

15 THE COURT: We have been here ten minutes keeping
16 this jury.

17 MR. PELUSO: I think it's extremely relevant.

18 THE COURT: You have had your chance.

19 MR. PELUSO: This is on something that just came
20 up.

21 We made a written demand on the use of any state-
22 ments made by Mr. Rosenwasser, we never were served
23 with this. This is the first time I have seen this
24 statement.

25 MR. LEVIN-EPSTEIN: What Mr. Peluso is talking

51 about is a photostatic copy of a piece of letterhead or
2 bill form entitled Statement Trecon Sportswear.

3 THE COURT: That's not the statement made by Mr.
4 Rosenwasser, you know as well as I do.

5 MR. NEWMAN: Can I just say one thing?

6 THE COURT: No. Let's get going.

7 (Whereupon the side bar conference was concluded.)

8 CROSS EXAMINATION BY

9 MR. LEVIN-EPSTEIN CONTINUED:

10 Q Mr. Rosenwasser, isn't it a fact, sir, that on
11 January 31 of 1972 you told somebody that Mr. Allicino had
12 worked for you from 1957 right up through and including Jan-
13 uary 31, 1972; isn't that a fact, sir?

14 MR. NEWMAN: Objection, Judge, as far as Allicino
15 is concerned.

16 THE COURT: This is perfectly proper cross-exam-
17 ination of this witness. If at some future time you
18 have a legitimate objection as to Mr. Allicino, I don't
19 see --

20 MR. NEWMAN: I'll renew my objection, your Honor.
21 If you want a convenient time, I'll make my views known.

22 MR. WALLACH: May we see that?

23 Q Isn't that a fact?

24 A I told you before, I don't remember. Don't
25 holler at me.

6

1 Rosenwasser - cross

106

2 THE COURT: You are here to answer questions,
3 not run the court room.

4 The jury is excused. Don't discuss the case.

5 (Whereupon the jurors were excused from the
6 court room.)

7 THE COURT: Mr. Peluso: You take this witness
8 out during the lunch hour and you explain to him you
9 don't talk back to the Court. If he does it again I'll
10 hold him in contempt and you know where he'll spend the
11 rest of the trial. We'll recess now for lunch until
12 5 minutes past 2. The Clerk will tell the jury. Give
13 him those instructions.

14 (Whereupon lunch recess was had.)

15 (After lunch recess.)

16 MR. LEVIN-EPSTEIN: Read back the last question.

17 (Whereupon the last question was read.)

18 A I don't remember.

19 Q I show you what has been marked --

20 Would it refresh your recollection, sir, if you
21 were told that on January 31, 1972 you not only told --

22 Withdrawn.

23 You also told someone Mr. Allicino was paid by
24 you \$250 a week.

25 MR. WALLACH: Objection to the form of the ques-

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tion.

THE COURT: Overruled.

A I wouldn't remember.

Q I direct your attention to Government's exhibit 22 marked for identification and I ask you to look at it, please.

A I wrote this.

Q Did you have an opportunity to examine Government's exhibit 22 for identification, sir?

A I wrote this.

Q Does that refresh your recollection as to whether or not on January 31, 1972 you ever told anyone that Mr. Alli-cino did work for you at that time?

A No.

Q That doesn't refresh your recollection?

A No.

Q I direct your attention to this portion where I am pointing on Government's exhibit 22 for identification and I ask you if that is your signature?

A Yes.

Q Did you write that signature there?

A Yes.

Q On the original of this document?

A I suppose so.

Q Did you write the text where I am pointing now

8 1 Rosenwasser - cross

2 in your handwriting on the original of this document?

3 A Where the original?

4 Q The question is, did you write it?

5 A I don't know, I can't remember, it's too far for
6 me.

7 Q I direct your attention to the printed portion
8 of the upper part of this document and I ask you if that's
9 the letterhead of Trecon Sportswear, your business?

10 A Yes.

11 Q I direct your attention to the handwritten por-
12 tion; is that your handwriting?

13 A No.

14 Q Is this your handwriting?

15 A No.

16 Q Is this your handwriting?

17 A Yes.

18 MR. LEVIN-EPSTEIN: I'll ask that this document
19 be marked.

20 MR. PELUSO: May we approach the side bar?

21 THE COURT: Wait a minute.

22 MR. PELUSO: I'm sorry.

23 (Whereupon a side bar conference was held.)

24 THE COURT: What is your objection?

25 MR. PELUSO: If I understand the testimony cor-

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9 1 rectly the witness said that his signature but not of
2 the other handwriting on there is his.

3 THE COURT: Is that your objection?

4 MR. PELUSO: Is it being offered?

5 MR. NEWMAN: May I object?

6 THE COURT: Admitted only as against Mr. Rosen-
7 wasser.

8 (Whereupon side bar conference was concluded.)

9 THE COURT: Document offered only against Mr.
10 Rosenwasser.

11 THE CLERK: Government's exhibit 22 received in
12 evidence.

13 Q Would it be fair to say that according to your
14 testimony the only handwritten portion on this document now
15 marked exhibit 22 in evidence is your signature, that's the
16 only thing you wrote on there?

17 A Yes, sir.

18 Q The rest of it you didn't write?

19 A No.

20 Q When you signed your original, was the rest of
21 this here?

22 A I don't remember 1972.

23 MR. LEVIN-EPSTEIN: Your Honor, may I read this
24 to the jury?

25 THE COURT: You may.

1 10 MR. LEVIN-EPSTIEN: It reads as follows:

2 National City Bank, January 31, 1972. Gerald
3 Allicino has been in my employ since 1957 and is now
4 earning a salary of \$250 a week. Thank you. Signed
5 Seymour Rosenwasser.

6 Q Mr. Rosenwasser, was Mr. Allicino working for you
7 in 1972?

8 A Last time I told you when he was working for me.
9 That was the last time that he was working for me.

10 Q Is this statement on Government's exhibit 22,
11 Mr. Rosenwasser, a stated fact?

12 A What was that?

13 Q Is this a true statement, what is written on
14 here, that Mr. Allicino had been in your employ since 1967
15 and earning a salary of two fifty a week; is that true, yes or
16 no?

17 A Read it again.

18 Q Dated January 31, 1972, "National City Bank.
19 Gerald Allicino has been in my employ since 1967 and is now
20 earning a salary of \$250 per week. Thank you. And signed
21 Seymour Rosenwasser.

22 A He was working for me in 19- when?

23 Q The document -- Well, you can see for yourself
24 it is dated January 31, 1972.

25 A He worked for me the year I told you. He didn't

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Rosenwasser - cross

111

2 work for me in '72.

3 Q In other words, that is an inaccurate or false
4 statement, sir?

5 A I don't know, I don't think so.

6 Q I beg your pardon?

7 A I don't think so.

8 Q You don't think it's a true statement?

9 A Right.

10 Q But you signed it, didn't you?

11 A I can't remember, it's too far gone. This is
12 my handwriting; yes.13 Q Do you know the circumstances under which that
14 note was written?

15 A I can't remember.

16 Q Would it refresh your recollection if I told you
17 that note was written as part of a loan transaction?

18 A I'll have to take your word for it.

19 Q Would it refresh your recollection if I told you
20 that note was written as part of a loan transaction?21 A I told you I would have to take your word for it.
22 I can't remember 1972. I have other problems beside that.

23 Q Do you recall 1957?

24 A I don't recall 1957.

25 Q Did you testify on cross-examination before lunch

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Rosenwasser - cross

112

2 that you recalled that Mr. Allicino worked for you in 1957, sir?

3 A Yes.

4 Q So you do recall that much about 1957?

5 A Yes.

6 Q Do you recall when Mr. Allicino worked for you
7 in 1957, according to your testimony on cross-examination
8 this morning, Mr. Allicino did not punch a time card?

9 A Yes.

10 Q Do you remember that much about 1957?

11 A I may have been mistaken. He may have punched
12 a time card.

13 Q Is your recollection now refreshed as to whether
14 Mr. Allicino punched a time card?

15 A I don't remember but it's possible that he did
16 punch a time card.

17 Q Do you wish to change your testimony?

18 A I am only telling you the facts as of the years
19 I can remember which I can.

20 Q Did you write this note at Mr. Allicino's request?

21 MR. NEWMAN: Objection, if your Honor please.

22 THE COURT: overruled.

23 MR. NEWMAN: There is no testimony that he wrote
24 the note.

25 THE COURT: Overruled.

Q I'll rephrase the question.

13

Rosenwasser - cross

113

2 Did you sign this note at Mr. Allicino's request?

3 A I signed it but I don't know anything about his
4 request.

5 Q I beg your pardon?

6 A I signed it. It's my signature there, but I
7 don't remember why I signed it or the reasons for signing it.

8 Q Do you remember the circumstances?

9 A I don't remember.

10 Q Would it refresh your recollection if I told you
11 this note was part of a loan transaction in which you were
12 called upon to vouch for Mr. Allicino's employment?

13 MR. NEWMAN: Objection.

14 MR. WALLACH: I also object, your Honor.

15 THE COURT: I'll allow it.

16 Does that refresh your recollection?

17 THE WITNESS: No, I told him I can't remember
18 that far back. I don't know the reason for it. It's
19 my signature on there. I agreed to that, but I don't
20 know, why, how, where or when. It's too far for me
21 to remember.22 Q Mr. Rosenwasser, is it your testimony as you sit
23 here before this jury that you have a better recollection of
24 twenty years ago than you have of four years ago?

25 MR. NEWMAN: Objection to the form of the ques-

14 1 Rosenwasser - cross

2 tition. Argumentative.

3 THE COURT: Overruled.

4 Q Is that your testimony?

5 A Well, sometimes something --

6 Q Can you answer the question yes or no?

7 A I'm answering it if you'll let me answer it.

8 THE COURT: Is your recollection better four
9 years ago?

10 THE WITNESS: I would like to answer it if he
11 gives me a chance.

12 THE COURT: Is your recollection better twenty
13 years ago?

14 THE WITNESS: I can't answer on a yes or no
15 basis.

16 Q Would you need to explain your answer?

17 A Yes.

18 Q Go ahead, Mr. Rosenwasser, explain.

19 A Thank you very much. I imagine in everybody's
20 mind --

21 MR. LEVIN-EPSTEIN: Objection, it's unresponsive.

22 I'm asking you to explain.

23 A I'm explaining it to the best of my ability, give
24 me a chance to explain it. I'll explain it the best I can.
25 If you interrupt me, I can't answer it. I imagine in every-

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Rosenwasser - cross

2 body's lifetime there's always something that sticks in every-
3 body's mind, your Honor's mind, this one, that one, everybody
4 always remembers something; at that point in time, Joe Alli-
5 cino's family came to me and asked me to give him a job.

6 Q Which time is that, Mr. Rosenwasser?

7 THE COURT: You're talking about that time, 1957,
8 is that what you are talking about?

9 THE WITNESS: Yes. That's the time I told his
10 family I would give him a job and do the best I can for
11 him, and that's the reason why I remember that partic-
12 ular time. Now, if a different incident were to come
13 up I probably would remember; in everybody's lifetime
14 there always comes a time where something sticks in
15 their mind.

16 Q Did anything happen in 1972 with respect to
17 Mr. Allicino that "sticks in your mind?"

18 A Yes.

19 Q What?

20 MR. NEWMAN: Objection. May I have a side bar?

21 THE COURT: I'll sustain the objection.

22 Q Is one of the things, Mr. Rosenwasser, that
23 sticks in your mind that on March 6, 1972 Mr. Allicino and
24 others delivered to your place of business a quantity of
25 stolen goods?

2 A I went through that and I told you, no.

3 Q That's not one of --

4 A I did tell you, no, no. I said nobody ever --

5 Nothing ever came to my place.

6 Q In other words, that's not one of the things
7 that sticks in my mind?

8 A It can't stick in my mind because it never hap-
9 p. d.

10 Q Is one of the things that sticks in your mind
11 that on the morning of March 7, 1972 a group of men including
12 Paul Fleischer came and unloaded the stuff in your place of
13 business? Does that stick in your mind?

14 A It never happened. It can't stick in my mind.

15 Q Is one of the things that happened in 1972 on
16 January 31st of 1972, Mr. Rosenwasser, the fact that you lied
17 to the First National City Bank on behalf of the defendant
18 Gerald Allicino, sir?

19 MR. WALLACH: I think the record should note the
20 Prosecutor's manner of asking that question.

21 THE COURT: Overruled.

22 MR. NEWMAN: I object to the form of the question
23 on behalf of Gerald Allicino there is no such evidence.

24 THE COURT: Overruled.

25 Q Answer the question.

2 THE COURT: Read it back.

3 (Questeion reread.)

4 A I never spoke to anybody in National City Bank
5 so naturally I couldn't lie to them.

6 MR. LEVIN-EPSTEIN: Your Honor, I would ask that
7 this portfolio document be marked as the Government
8 exhibit next in sequence for identification.

9 THE CLERK: One file marked for identification
10 as Government's exhibit 23.

11 Q Mr. Rosenwasser, I show you what has been marked
12 Government's exhibit 23 for identification and I'll ask you if
13 you would look at it, please, and tell the jury if you recog-
14 nize it.

15 A Yes, I recognize it.

16 Q Are documents such as these kept in the ordinary
17 course of business of the Trecon Sportswear Company?

18 A Yes.

19 Q Were these documents, Government's exhibit 23
20 for identification, kept, prepared and maintained in the
21 course of business of Trecon Sportswear?

22 A Yes.

23 Q What are these documents?

24 A Payroll.

25 MR. LEVIN-EPSTEIN: Offer it in evidence.

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Rosenwasser - cross

118

2 MR. PELUSO: No objection.

3 MR. NEWMAN: May I see them? I have never seen
4 them.5 MR. WALLACH: Your Honor, may we take a look at
6 them?

7 THE COURT: Of course.

8 MR. NEWMAN: I object on the ground of connection
9 insofar as Allicino is concerned.

10 THE COURT: Let me see it.

11 MR. WALLACH: I also object on the ground that
12 this subject matter, the evidentiary aspect of this has
13 already been covered.

14 THE COURT: Step up, gentlemen.

15 (Whereupon a side bar conference was held.)

16 MR. LEVIN-EPSTEIN: If the Court please, I make
17 an offer of proof.18 THE COURT: This doesn't have January '72 except
19 the last week.20 MR. LEVIN-EPSTEIN: That's correct and that's the
21 portion I'm interested in.

22 THE COURT: Just that one page?

23 MR. LEVIN-EPSTEIN: Yes.

24 THE COURT: His name isn't on here.

25 MR. LEVIN-EPSTEIN: That's exactly the point.

19

1 THE COURT: What is your objection?

2

2 MR. NEWMAN: My objection is that it has no
3 connection with Allicino. If your Honor wants to give
4 a precautionary instruction.

5

5 MR. WALLACH: My objection, as I said, is this
6 is overdoing it. I think now the jury got the point,
7 the Prosecutor made his point, just to put that in will
8 outweigh the prejudice.

9

9 THE COURT: Mark that one page, it's only January.

10

10 MR. LEVIN-EPSTEIN: The only point I'm bringing
11 out here is that there is a document admittedly signed
12 about whether he signed the body of it, whether that up
13 to January 31st Allicino worked for him. I'll delete
14 the entire matter except the sheet that's relevant.

15

15 MR. WALLACH: Only January?

16

16 MR. LEVIN-EPSTEIN: I'll put it in as to January.

17

17 Let the record indicate I'm removing all the
18 pages in 23 for identification with the exception of
19 those pages which are marked week ending January 14.

20

20 THE COURT: Ask him where the prior records are.
21 Is that all that's produced? What happened to prior
22 to January?

23

23 MR. LEVIN-EPSTEIN: I asked him for all the
24 records of January. This is all that were produced.

25

25 THE COURT: I would like to know. If this is the

461
20 1 only record I have I would have to let in more: that
2 this is the actual -- He admitted it's the payroll
3 records. Ask him where the rest of it is.

4 MR. LEVIN-EPSTEIN: I'll ask him. The only doc-
5 uments that are included in the exhibit as just described
6 are the bottom three pages, are those pages marked week
7 ending January 14, 1972, week ending January 31, 1972;
8 and week ending January 28, 1972.

9 (continue ext page)

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BD 5 1 (Whereupon side bar conference was
2 concluded.)

3 MR. LEVIN-EPSTEIN: Offered in evidence.

4 THE COURT: Yes.

5 THE CLERK: Government's Exhibit 23 received
6 in evidence.

7 CROSS-EXAMINATION

8 BY MR. LEVIN-EPSTEIN (Continuing):

9 Q Mr. Rossenwasser, appearing on the folder in
10 which Government's Exhibit 23 is contained there appears,
11 does there not, the notation 1972, payroll?

12 A Yes.

13 Q Could you tell the jury, please, who put that
14 notation on the file, if you know?

15 A Maybe the accountant.

16 Q Do you have any personal knowledge of that?

17 A No, I don't.

18 Q Would it be fair to say that contained within
19 Government's Exhibit 23 in evidence at this time are three
20 ledger sheets?

21 A Yes.

22 Q Will you tell the jury for what period those
23 three ledger sheets correspond.

24 A I don't understand you.

25 Q For what period of time do those three sheets

1 Rosenwasser-cross

2 reflect the payroll of 1972 at Trecon Sportswear.

3 A I don't understand the question.

4 Q Let me ask you this question. Directing your
5 attention to this page, what notation is made in the upper
6 right-hand corner?

7 A Week ending January 14, 1972.

8 Q Does there appear a listing, at least the
9 name of one person to whom payroll was made out the week
10 ending January 14, 1972?

11 A Yes.

12 Q Whose name is that, sir?

13 A Queen Jones.

14 Q Is Mr. Allicino's name anywhere on that?

15 A No.

16 MR. NEWMAN: May I renew my objection?

17 THE COURT: Bear in mind this exhibit has only
18 been admitted as against Mr. Rosenwasser, not against
19 Mr. Allicino.

20 Q I direct your attention to the next sheet,
21 tell the jury what is in the upper right-hand corner of that
22 sheet.

23 A Week ending January 21, 1972.

24 Q Whose name appears on that sheet?

25 A Queen Jones.

1 Rosenwasser-cross

2 Q Do you see Mr. Allicino's name anywhere on that?

3 A No.

4 Q What does this one say finally, sir?

5 A January 28.

6 Q What year?

7 A '72.

8 Q Do you see Mr. Allicino's name anywhere on

9 there?

10 A No.

11 Q Do you see your own name on there?

12 A Yes.

13 Q Does this mean that Mr. Allicino was not paid

14 by your company during any one of those three weeks, sir?

15 A That's all it says there.

16 Q Is that what it means?

17 A Yes.

18 Q Can you tell the jury, please, if you can,

19 where the record for the week ending January 7th are?

20 A Whatever you have there.

21 Q Do you have any independent knowledge as

22 to where the ledger sheets for the week of January 7, 1972

23 are?

24 A I couldn't tell you anything about 1972.

25 Q Is it fair to say you have no knowledge?

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1 Rosenwasser-cross

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A I can't remember 1972.

3

Q You testified on direct examination,

4

Mr. Rosenwasser, that the first time you had ever heard
5 of Paul Fleischer was to do with this case?

6

A Yes.

7

Q You never heard of him before?

8

A No.

9

Q You never met him anywhere?

10

A No.

11

Q And the first time you saw him was when you
12 testified here for this trial?

13

A Yes.

14

Q And the same thing with Peters and Addolorio,
15 they weren't here?

16

A They weren't here, I don't know who they are.

17

Q You've never seen them?

18

A No.

19

Q Mastriangello.

20

A I've never seen them. If they walked right
21 past me I wouldn't know them.

22

Q Did you ever do any business of any kind with
23 Fleischer?

24

A I don't know the name. I can't do business
25 with somebody I don't know.

5

1

Rosenwasser-cross

466

2 Q You have socialized with him in any way?

3 A Don't know the man.

4 Q Have you ever met with him at his home
5 anywhere?

6 A Don't know the man.

7 Q You have absolutely no contact according to
8 your testimony with Mr. Fleischer up to the time that
9 he testified in this case; is that correct?

10 A Yes.

11 Q Did you hear Mr. Fleischer testify that you
12 had never threatened him?

13 A Yes.

14 Q Was he lying?

15 MR. WALLACH: Objection, your Honor.

16 THE COURT: I'll allow it.

17 Q Was he lying when he said you never threatened
18 him, Mr. Rosenwasser?

19 A He could be lying, he doesn't know me.

20 Q So he was telling the truth about that?

21 A Maybe from the whole thing, maybe that's the
22 only thing in his testimony that he told the truth about.

23 Q Is it your testimony, Mr. Rosenwasser, for the
24 entire testimony that Fleischer gave, the only truthful
25 thing that he said was that Seymour Rosenwasser never

6 1 Rosenwasser-cross

2 threatened me?

3 A That's right.

4 MR. WAILACH: Objection, your Honor, this
5 covers lengthy testimony.

6 THE COURT: He said that's right.

7 MR. LEVIN-EPSTEIN: I have no further
8 questions of this witness, your Honor.

9 REDIRECT EXAMINATION

10 BY MR. PELUSO:

11 Q Mr. Rosenwasser, would you examine Government's
12 Exhibit 22 in evidence?

13 A I looked at it.

14 Q Whose signature is that at the base of that?

15 A Mine.

16 Q Any of the other writing on that Government
17 exhibit written by you?

18 A No.

19 Q Do you know when it was written there?

20 A No.

21 Q Do you know who wrote it there?

22 A No.

23 Q Is that your letterhead?

24 A Yes.

25 Q Did you address that letter to the First

1 1 National Bank on behalf of anyone?

2 A No.

3 Q You were asked earlier by Mr. Levin-Epstein
4 did you lie to the First National City Bank on behalf
5 of Gerald Allicino. I am going to ask you, sir --

6 A How could I lie to them, I didn't bother with
7 them. How could I lie? I don't know them. I don't go
8 there.

9 Q You were shown, sir, some payrolls covering
10 the week ending January 14, 1972; January 21, 1972;
11 January 28, 1972. On examining them you said that
12 Mr. Allicino's name did not appear on those; is that right?

13 A Yes.

14 Q Why didn't his name appear on those?

15 A He hasn't been working for me.

16 MR. PELUSO: I have no further questions.

17 RECROSS EXAMINATION

18 BY MR. LEVIN-EPSTEIN:

19 Q Is it your testimony that somebody else wrote
20 this note over your signature?

21 A I don't know.

22 Q Is it your testimony, sir, that somebody
23 tricked you into signing a blank letterhead?

24 A I can't remember 1972.

8 1

Rosenwasser-recross

2 Q Is it your testimony, Mr. Rosenwasser, that
3 you never had any communication?

4 A I'm sorry, let me see that letter?

5 Q Indicating Government's Exhibit 22.

6 A Could you stay here for a moment?

7 Q With the Court's permission.

8 A Can I show this to you, your Honor?

9 THE COURT: Answer questions.

10 THE WITNESS: This is my signature; is that
11 right?

12 MR. LEVIN-EPSTEIN: Indicating the signature
13 at the bottom of Government's Exhibit, your Honor.

14 THE WITNESS: That's my signature. This
15 handwriting -- would you say this handwriting is the
16 same as this?

17 MR. LEVIN-EPSTEIN: Thank you, Mr. Rosenwasser.

18 RECROSS-EXAMINATION

19 BY MR. LEVIN-EPSTEIN (Continued):

20 Q Mr. Rosenwasser, is it your testimony that you
21 had no contact with the First National City Bank with
22 respect to a loan transaction concerning Mr. Allicino?

23 MR. NEWMAN: Objection, that presupposes that
24 such a transaction took place.

25 MR. LEVIN-EPSTEIN: The Government would be

2 happy to make an offer of proof.

3 THE COURT: Are you going to connect it?

4 MR. LEVIN-EPSTEIN: If necessary it could be
5 made subject to connection.

6 THE COURT: Connect it. Bear in mind this
7 testimony, the answer is not offered as against
8 Mr. Allicino at this stage.

9 Q Is that your testimony, sir?

10 A Whatever I told you.

11 MR. LEVIN-EPSTEIN: No further questions.

12 THE COURT: You may step down. Thank you.

13 MR. PELUSO: Defendant Rosenwasser at this
14 time rests.

15 MR. LEVIN-EPSTEIN: May we approach the side
16 bar, your Honor?

17 (Whereupon side bar conference was had.)

18 MR. LEVIN-EPSTEIN: In the interest of
19 expediting this matter the Government would like to
20 put in a rebuttal case and to that end I would ask,
21 and I'm sure Mr. Newman will join with me a Court
22 instruction to the jury that the last question of
23 Mr. Rosenwasser with respect to loan transaction is
24 not to be considered against either party; is that a
25 fair statement?

10

Rosenwasser-recross

2

MR. NEWMAN: Why not just strike the question
and answer.

4

MR. LEVIN-EPSTEAIN: I represent to the Court
if put to the test I could call in the bank officer
but I think it's a collateral matter.

7

THE COURT: Read back the last question.

8

(Last question read.)

9

THE COURT: Ladies and gentlemen, disregard
the last question asked by the prosecutor to wit the
record shows there is no answer anyway and I caution
you, of course, the statement of counsel in their
questions are not evidence unless they are confirmed
from the witness stand. The last question was with
respect to a loan transaction had by Mr. Allicino
with the First National City Bank -- disregard that
question.

18

MR. NEWMAN: Thank you.

19

MR. LEVIN-EPSTEIN: With that ruling the
Government rests.

21

THE COURT: Ladies and gentlemen, we'll have to
take a five minute recess. We'll recall you in a
moment. Don't discuss the case.

24

(Whereupon jurors were excused.)

25

MR. WALLACH: I'm constrained to make a motion

11 1 for a judgment of acquittal.

2 THE COURT: You don't go first. I think he
3 goes first.

4 MR. WALLACH: I apologize.

5 MR. NEWMAN: I move for a judgment of
6 acquittal, your Honor, under Rule 29. Your Honor
7 heard the evidence, no need for me to rehash it.

8 THE COURT: I'll have to deny it.

9 MR. NEWMAN: In the alternative, may I
10 respectfully move for a severance on the grounds the
11 case has now evolved and revolved seems to have
12 centered about certain items of testimony involving
13 the witness Rosenwasser concerning a note, and I
14 would indicate to your Honor that there is no real
15 way of extricating my client from the ~~surrounding~~
16 surrounding the note. It was really irrelevant
17 except to the issue of credibility and recollection
18 on the part of Mr. Rosenwasser and I think the spill-
19 over of it is such that I frankly confess I didn't
20 know how to handle it. I was presented with certain
21 Hobson choices to go in and take it all apart. I
22 felt whatever method I followed would spill over,
23 it was so dangerous against my client there was no way
24 of explaining it. I submit that an aura is created
25 so conspiratorial, actions concerning that particular

12 loan and everything else involving it, it really
13 doesn't go to the issue of Rosenwasser's credibility.
14 I know I don't have a true type Bruton situation,
15 this has been presented for cross-examination -- what
16 I'm saying to your Honor, the dilemma I find myself in,
17 the prejudice to my client makes it impossible to get
18 in my mind to get out from under it, and it's not
19 something that I could control. It's not something
20 that I could set into motion and then try to stop.
21 There is no way that I could figure out how to handle
22 it, and I just think for him to get a fair trial --
23 maybe it makes me look stupid, I have no way of
24 handling that particular note and I have nothing to
25 do with it. As far as putting or exposing it or how
26 to really gracefully get away from it, maybe it's my
27 shortcoming.

17 THE COURT: I don't think it's grounds for a
18 severance.

19 MR. NEWMAN: Of course I'm calling for a rather
20 expensive exercise of your discretion. I can't put
21 my finger on a case that authorized it.

22 THE COURT: The fact that one defendant took
23 the witness stand and said what a jury might or might
24 not believe is not really grounds to sever as against
25 the other one, because of the "spill-over" if there

13 1 be one.

2 MR. NEWMAN: I recognize what your Honor is
3 saying as a general principle. The thing that
4 bothers me is the contents of the particular note
5 itself, the fact that it refers to Allicino, it's
6 addressed to the First National City Bank, then I
7 think, your Honor, it takes it out of the province
8 of straight credibility situation. It seems like
9 he's in league with it.

10 THE COURT: Of course, but this is one of
11 the problems you have in a case of this kind and if
12 he had gotten up there and testified that he knew
13 for example that Allicino has been involved in this
14 whole transaction, that would have been even more of
15 a spill-over against your client.

16 MR. NEWMAN: That I can cross-examine him
17 t.

18 THE COURT: You could have cross-examined on
19 the theoretical basis, it's just one of those things.

20 MR. NEWMAN: May the record just note my motion
21 for a severance.

22 THE COURT: I just don't think there is a
23 basis for it.

24 MR. NEWMAN: The main conjecture, if I might,
25 I know I'm beating a dead horse, just to complete the

1 record. My big problem with it is it's not something¹⁷⁵
2 clearly through the scope of their conspiracy that
3 I could see happening, now I'm married to it. It
4 predates it, goes back to January and I am indicating
5 on grounds of relevancy, not within the scope of
6 the conspiracy; and thirdly the prejudicial spillover,
7 I respectfully move for a severance.

8 THE COURT: I have to deny it.

9 MR. WALLACH: May I be heard? I move for a
10 mistrial first on the following grounds. In regard
11 to the last phase of the testimony we are being denied
12 our right of confrontation. I should be constrained
13 to say perhaps we should call Mr. Allicino as a
14 witness since his name is mentioned and he's the
15 alleged beneficiary of any loan, and the inference
16 flowing from that to a jury could be that my client
17 had some kind of arrangement, where a bank was
18 defrauded or furnished a false statement. My client
19 denies that, it's true, but at the same time there is
20 no showing she had a stake in it. This bring up
21 again as an attempted impeachment --

22 THE COURT: That's all it is.

23 MR. WALLACH: Your Honor, this to a jury of
24 laymen, this may become the case instead of what
25 Mr. Fleischer said as opposed to my client. That's

1 what we are here for to determine the credibility
2 of these two witnesses and to determine the basis of
3 all of the evidence. I understand it's also a
4 collateral matter. I'm constrained, I don't want to
5 be naive and say I want to call Mr. Allicino. He
6 wouldn't get up and testify in his own behalf, he's
7 not going to waive his rights. We are being denied
8 the right to call a witness. This is a collateral
9 matter that frankly never should have occurred.

10 THE COURT: It's collateral in the sense I
11 will instruct the jury it has been introduced for
12 impeachment purposes only, and this is not to be
13 taken as evidence in chief, but that is the purpose
14 for which it was offered under credibility of the
15 witness.

16 MR. LEVIN-EPSTEIN: As I understand the
17 credibility of any witness, but particularly the
18 defendant is never a collateral matter.

19 THE COURT: In this case it's terribly
20 important.

21 MR. WALLACH: The question asked of him, he
22 testified that he employed Allicino in '57 and he
23 was kept --

24 THE COURT: This is the heart of this matter.
25 I think you understand when I say that your man said

1 in effect that he had very light contact with
2 Mr. Allicino and now, at least, one bit of evidence
3 shows that this may not have been the case, may or
4 may not have been the case. This is something to be
5 argued to the jury and it doesn't -- it's not being
6 offered as to the truth of the matter asserted
7 therein as such, it's being offered to impeach his
8 credibility.

9 MR. WALLACH: I have another argument. May I
10 be heard? I move under the Fifth Amendment
11 specifically the due process, because the Government
12 had this document in its possession, it was never
13 shown to us. Be that as it may, whether we had a
14 right to it or not is irrelevant. Let's even say we
15 didn't have the right, due process, elementary
16 fairness. It may be that the man didn't remember.
17 It may have been an untruth but not an intentional
18 falsehood; it may have been something he overlooked.
19 It may be the fact that he's on the stand and
20 irrespective -- and when I say irrespective, his
21 behavior, his attitude with your Honor, there is a
22 subjective element to any witness on the stand to
23 make a statement like this. If we had known about
24 this this all could have been avoided but what the
25 prosecutor has done over here was to ask him a

1 question about Allicino, keep asking whether he ever
2 told anybody else and then confront him with this. 178

3 THE COURT: That's the purpose of cross-
4 examination.

5 MR. WALLACH: But I submit it's a trap.

6 THE COURT: As far as confrontation documents,
7 I know of no rule, and certainly based on my
8 experience --

9 MR. WALLACH: A case came down, I read it this
10 morning where a witness was called before a grand
11 jury on the Task Force --

12 THE COURT: Grand jury testimony is something
13 else.

14 MR. WALLACH: Never told that the witness was
15 a target, they affirmed dismissal of a purjury. It's
16 unfair of the prosecutor to do that.

17 THE COURT: I don't think it's unfair. This
18 is a question of credibility and this is not offered
19 for the case in chief, if it was then I would agree
20 with you that he should have given you a document
21 before, but not confrontation documents.

22 MR. WALLACH: I also now move under Rule 29 --
23 I don't want to be repetitive -- I say that, however,
24 in view of the witnesses over here, your Honor has
25 observed their demeanor, I think the benefit of the
doubt should be given to Mr. Rosenwasser, the motion

1 should be granted.

2 THE COURT: I have to deny the motion.

3 MR. WALIACH: Can I have a part of that five
4 minutes, Judge, but before we take part of the five
5 minutes, the question is should we start summation
6 this afternoon or should we take them tomorrow
7 morning at 9:30.

8 THE COURT: How long will you be?

9 MR. LEVIN-EPSTEIN: As I anticipate, I
10 wouldn't think -- the initial summation would last
11 more than 35 or 40 minutes, that would be very long.
12 I would think less than that.

13 MR. NEWMAN: Would your Honor consider ruling
14 on the requests to charge?

15 THE COURT: I'll do that tomorrow afternoon.
16 Another question, I'm trying to fit it in, can we
17 fit it all in tomorrow morning.

18 MR. LEVIN-EPSTEIN: Rather than go over
19 tomorrow morning with the summation and charge?

20 THE COURT: That's what I'm thinking. Can we
21 fit it all in tomorrow morning at 9:30. If I could
22 start charging the jury at 12:00 I could get it to
23 them before lunch, which means you have to stipulate
24 to a time schedule and I'll have to hold you to it.

25 MR. LEVIN-EPSTEIN: That's okay with the

pa/ss
1/12

1 THE COURT: All right, gentlemen, we are going
2 to take about a ten-minute recess, then we are going
3 to ask the marshals to take the luncheon orders from
4 you, because my charge is going to run approximately
5 an hour in length, so if you send out for lunch say at
6 a quarter to 12:00, you should have it here about
7 quarter to 1:00. As far as the alternates are
8 concerned, it's up to you. If you wish to order
9 lunch, you may. When you are instructed on the law
10 you may wait in the witness room across the hall or
11 in the alternative, you can go right after the charge
12 on the law and go about your own business. That's up
13 to you. I will give you the option.

14 So, we will take a ten-minute recess. Don't
15 discuss any aspects of the case. Then we will begin
16 instructions on the law. Okay.

17 (Whereupon, the jury leaves the Courtroom at
18 11:35 o'clock a.m.)

19 (Whereupon, a short recess was taken.)

20 (Whereupon, the jury entered the Courtroom at
21 11:50 o'clock a.m.)

22 THE COURT: It's my practice to read the
23 instructions on the law to juries, and I am not going
24 to vary it in your case, I am going to read the
25 instructions to you. I realize it makes it more

2 1

Charge

2 difficult for you to follow if I read it, rather than
3 if I give it extemporaneously, but I am just going to
4 beg your indulgence, because if I read the instructions
5 it minimizes the risk for error, and may solve
6 problems in the long run. It requires a little effort
7 on your part, if my voice starts to fall, and you can't
8 hear any portion of the instructions, let me know,
9 raise your hand or do something to attract my attention.
10 I will try to keep my voice up.

11 Now that you have heard the evidence and the
12 argument, it becomes my duty to give the instructions
13 of the Court as to the law applicable to this case.

14 It is your duty as jurors to follow the law as
15 stated in the instructions of the Court, and to apply
16 the rules of the law, so given to the facts as you find
17 them from the evidence in the case.

18 You are not to single out one instruction alone
19 as stating the law, but must consider the instructions
20 as a whole.

21 Neither are you to be concerned with the wisdom
22 of any rule of law stated by the Court. Regardless of
23 any opinion you may have as to what the law ought to
24 be, it would be a violation of your sworn duty to base
25 a verdict upon any other view of the law than that given

3

1 Charge

2 in the instruction of the Court; just as it would be
3 a violation of your sworn duty, as judges of the facts,
4 to base a verdict upon anything but the evidence in the
5 case.

6 You must not permit yourselves to be governed
7 by sympathy, bias, prejudice or any other considerations
8 not founded on evidence and these instructions on the
9 law.

10 Justice through trial by jury must always
11 depend upon the willingness of each individual juror
12 to seek the truth as to the facts from the same
13 evidence presented to all the jurors; and to arrive at
14 a verdict by applying the same rules of law as given in
15 the instructions of the Court.

16 You have been chosen and sworn as jurors in this
17 case to try the issues of fact presented by the
18 allegations of the indictment and the denial made by
19 the "not-guilty" pleas of the accused. You are to
20 perform this duty without bias or prejudice as to any
21 party.

22 Again the law does not permit jurors to be
23 governed by sympathy, prejudice, or public opinion.
24 Both the accused and the public expect that you will
25 carefully and impartially consider all the evidence in

Charge

2 the case, follow the law as stated by the Court and
3 reach a just verdict, regardless of the consequences.

4 I am not sending the exhibits which have been
5 received in evidence with you as you retire for your
6 deliberations. You are entitled, however, to see any
7 or all of these exhibits as you consider your verdict.
8 I suggest that you begin your deliberations and then,
9 if it would be helpful to you, you may ask for any or
10 all of the exhibits simply by sending a note to me
11 through one of the deputy marshals stationed outside
12 your jury room door.

13 Now, as I have told you here before, an
14 indictment is but a form or method of accusing a
15 defendant of a crime. It is not evidence of any kind
16 against the accused.

17 There are two types of evidence from which a
18 jury may properly find a defendant guilty of a crime.
19 One is direct evidence, such as the testimony of an
20 eye-witness. The other is circumstantial evidence,
21 the proof of facts and circumstances which rationally
22 imply the existence or non-existence of other facts
23 because such other facts usually follow according to
24 the common experience of mankind. For example, the
25 footprint of a man in the sand implied to Robinson

2 Crusoe that there was another man with him on the
3 desert island, and indeed there was, the man Friday.
4 Thus, on the one hand you may have direct evidence of
5 the issue, and on the other hand, you may have
6 circumstantial evidence of the issue.

7 The law does not hold that one type of evidence
8 is necessarily of better quality than the other. As
9 the law requires only that the Government proves its
10 case beyond a reasonable doubt both on the direct and
11 circumstantial evidence. At times the jury might feel
12 that circumstantial evidence is of better quality. At
13 other times they may feel direct evidence is of
14 better quality. That judgment is left entirely to you.

15 As a general rule, the law makes no distinction
16 between direct and circumstantial evidence, but simply
17 requires that, before convicting a defendant, the jury
18 be satisfied of the defendant's guilt beyond a
19 reasonable doubt from all the evidence in the case.

20 The law presumes the defendants to be innocent
21 of the crime. Thus a defendant, although accused,
22 begins the trial with a "clean slate" with no evidence
23 against him. And the law permits nothing but legal
24 evidence presented before the jury to be considered in
25 support of any charge against the accused. So the

6 1 Charge

2 presumption of innocence alone is sufficient to acquit
3 a defendant, unless the jurors are satisfied beyond a
4 reasonable doubt of the defendants' guilt after
5 careful and impartial consideration of all the evidence
6 in the case.

7 The burden is always upon the prosecution to
8 prove guilt beyond a reasonable doubt. The burden
9 never shifts to a defendant; for the law never imposes
10 upon a defendant in a criminal case the burden or duty
11 of calling any witnesses or producing any evidence.

12 A reasonable doubt does not mean a doubt
13 arbitrarily and capriciously asserted by a juror
14 because of his or her reluctance to perform an
15 unpleasant task. It does not mean a doubt arising
16 from the natural sympathy which we all have for others.
17 It is not necessary for the Government to prove the
18 guilt of the defendant beyond all possible doubt.
19 Because if that were the rule, very few people would
20 ever be convicted. It is practically impossible for a
21 person to be absolutely sure and convinced of any
22 controverted fact which, by its nature, is not
23 susceptible of mathematical certainty. In consequence,
24 the law says that a doubt should be a reasonable doubt,
25 not a possible doubt.

7

1 Charge

2 A reasonable doubt is a doubt based upon reason,
3 and common sense, the kind of doubt that would make a
4 reasonable person hesitate to act. Proof beyond a
5 reasonable doubt must therefore be proof of such a
6 convincing character that you would be willing to rely
7 and act upon it unhesitatingly in the most important
8 of your affairs.

9 The jury will remember that a defendant is
10 never to be convicted on mere suspicion or conjecture.

11 Again, a reasonable doubt means a doubt that is
12 based on reason and must be substantial rather than
13 speculative.

14 It must be sufficient to cause a prudent person
15 to hesitate to act in the most important affairs of
16 his or her life.

17 The requirement of proof beyond a reasonable
18 doubt operates on the whole case and not on the
19 separate bits of evidence. Each individual item of
20 evidence need not be proven beyond a reasonable doubt.

21 Now, the indictment in this case contains two
22 counts, the first is the so-called substantive count,
23 and the second the conspiracy count.

24 They must each be considered separately.

25 The indictment names two defendants. They are

8 1
Charge

2 the only persons whose guilt or innocence you must
3 announce in your verdict.

4 In the determination of guilt or innocence you
5 must bear in mind that guilt is personal, the guilt or
6 innocence of a defendant on trial before you, must be
7 determined separately with respect to himself, solely
8 on the evidence against him or the lack of evidence.

9 In the case of each defendant you must consider
10 the proof or lack of proof of the charge against him,
11 and not against somebody else.

12 Now, it is charged in Count 1 of the indictment
13 that "on or about the 6th day of March, 1972, within the
14 Eastern District of New York, the defendants Gerald
15 Allicino and Seymour Rosenwasser did willfully and
16 unlawfully receive and have in their possession a
17 quantity of women's knitted garments having a value in
18 excess of \$100, which goods had been stolen on or about
19 March 3rd, 1972, from a motor truck belonging to the
20 Arlene Knitwear Company, Brooklyn, New York, while
21 moving as a part of and constituting an interstate
22 shipment of freight from New York to New Jersey.

23 "The defendants, Seymour Rosenwasser and Gerald
24 Allicino knowing the same to have been stolen in
25 violation of Title 18, United States Code Section 659

9 1 Charge

2 and Section 2."

3 Section 659 of Title 18 of the United States
4 Code reads in pertinent part as follows:5 "Whoever embezzles, steals, or unlawfully
6 takes, carries away from any motor truck or other
7 vehicle with intent to convert to his own use any goods
8 or chattels moving as or which are a part of or which
9 constitute an interstate or foreign shipment of freight,
10 express or other property; or11 "Whoever buys or receives or has in his
12 possession any such goods or chattels, knowing the same
13 to have been embezzled or stolen."14 Shall be guilty of an offense against the laws of
15 the United States.16 Count 1 also cites Section 2 of Title 18 which
17 is the aiding and abetting section and which reads as
18 follows:19 "Whoever commits an offense against the
20 United States, or aids, abets, counsels, commands,
21 induces or procures its commission, is punishable as
22 a principal.23 "Whoever willfully causes an act to be done,
24 which if directly performed by him or another would be
25 an offense against the United States, is punishable
as a principal."

R13

2 THE COURT: (Continuing) Now, the essential
3 elements of the counts charged on Count 1 which must be
4 proved beyond a reasonable doubt are as follows:

5 One, that the accused had the goods or
6 merchandise in his or their possession, as the case may
7 be;

8 Two, that such goods or merchandise exceeded
9 in value of \$100;

10 Three, that such possession was done knowingly
11 and intentionally;

12 Four, that such goods or merchandise had been
13 stolen unlawfully, taken or carried away from a motor
14 truck or other vehicle while the goods or merchandise
15 were moving as a part of or constituted an inter-
16 state shipment of freight, express or other property;
17 and

18 Five, that the accused knew such goods or
19 merchandise had been stolen.

20 It is not necessary that the accused knew that
21 the goods or merchandise had been stolen from a
22 motortruck or other vehicle while the goods or
23 merchandise were moving as part of a foreign shipment.

24 It is necessary only that the proof showed that the
25 accused knew that the goods or merchandise had been

2

1 Charge of the Court

2 || stolen.

3 Now, with respect to all of the counts of the
4 indictment, the term "interstate shipment of freight
5 or express" includes a shipment in interstate
6 commerce.

2 shipment shall be *prima facie* evidence of the place
3 from which and to which such shipment was made."

4 *Prima facie* evidence means sufficient evidence,
5 unless outweighed by other evidence in the case. In
6 other words, way bills or bills of lading or other
7 shipping documents such as invoices, if proved, are
8 sufficient to show the interstate commerce character
9 of the shipment in the absence of evidence in the
10 case which leads the jury to a different or contrary
11 conclusion.

12 Again, the evidence in the case need not
13 establish that the accused actually knew the goods or
14 merchandise mentioned in the indictment constituted a
15 part of an interstate shipment.

16 The word "unlawfully" means contrary to law.
17 So to do an act unlawfully means to do willfully
18 something which is contrary to law.

19 The word "stolen" as used in the crime of
20 interstate transportation of stolen goods includes all
21 wrongful and dishonest takings of property with the
22 intent to deprive the owner of the rights and
23 benefits of ownership.

24 Otherwise stated, the word "steal" is used to
25 denote any dishonest transactions whereby any person

2 obtains that which rightfully belongs to another and
3 deprives the owner of the rights and benefits of
4 ownership but may or may not involve the element of
5 stealth. To steal means to take away from one in
6 lawful possession without right with the intention to
7 keep it wrongfully.

The Government must establish the value of the property stolen because the law provides a greater penalty if the value of the property exceeds \$100. Value under the statute means face, par or market value or cost price, either wholesale or retail, whichever is greater. The value of the property stolen is a question of fact to be determined by the jury.

15 Proof as to the value of the goods in this case
16 may be found in the invoices received in evidence.
17 You are instructed that the defendant's knowledge or
18 belief in respect to the value of the goods is wholly
19 irrelevant.

20 In order to authorize the greater penalty, the
21 Government must establish beyond a reasonable doubt
22 that the value of the goods or merchandise exceeded
23 \$100.

24 One of the elements of the crime charged in
25 each count of the indictment is that each defendant

2 knew that the merchandise he possessed was unlawfully
3 stolen. And as I have already instructed you, that
4 must be proven beyond a reasonable doubt.

5 Knowledge is something that you cannot see with
6 the eye or touch with the finger. It is seldom
7 possible to prove it by direct evidence.

8 The Government relies largely upon circum-
9 stantial evidence in this case to establish knowledge.

10 In deciding whether the accused knew the
11 merchandise was stolen, you must consider all the
12 circumstances such as how the accused handled the
13 transaction, how he or they conducted himself or them-
14 selves. Do his or their actions betray guilty knowledge
15 that he or they were dealing with stolen merchandise
16 or are his or their actions those of an innocent man
17 or men?

18 Guilty knowledge cannot be established by
19 demonstrating mere negligence or even foolishness on
20 the part of the accused.

21 Knowledge that the goods may be stolen may be
22 inferred from the circumstances that would convince a
23 man of ordinary intelligence that this is the fact.
24 The element of knowledge may be satisfied by proof
25 that an accused deliberately closed his eyes to what

2 otherwise would have been obvious to him.

3 Thus, if you find that the accused acted with
4 reckless disregard of whether the merchandise was
5 stolen, and with a conscious purpose to avoid learning
6 the truth, the requirements of knowledge would be
7 satisfied unless the accused actually believed they
8 were not stolen.

9 In this connection, you should scrutinize the
10 entire conduct of the accused at or near the time the
11 offenses were alleged to have been committed.

12 On the question of possession, possession of
13 property recently stolen, if not satisfactorily
14 explained, is ordinarily a circumstance from which the
15 jury may reasonably draw the inference and find, in
16 the light of surrounding circumstances shown by the
17 evidence in the case, that the person in possession
18 knew the property had been stolen.

19 Ordinarily, the same inferences may reasonably
20 be inferred from a false explanation of possession of
21 recently-stolen property.

22 The term "recently" is a relative term, and has
23 no fixed meaning. Whether property may be considered
24 as recently stolen depends upon the nature of the
25 property, and all the facts and circumstances shown

2 by the evidence in the case. The longer the period
3 of time since the theft, the more doubtful becomes the
4 inference which may reasonably be drawn from its
5 unexplained possession.

6 If you find a reasonable doubt from the evidence
7 in the case that the goods or merchandise described in
8 counts in count 1 of the indictment was stolen, and
9 that while recently stolen, the goods or merchandise
10 were in the possession of the accused, you may, from
11 those facts draw the inference that the goods or
12 merchandise were possessed by the accused with knowledge
13 that the goods or merchandise were stolen, unless
14 possession of the recently-stolen goods or merchandise
15 by the accused is explained to the satisfaction of the
16 jury by other facts and circumstances in evidence in
17 the case.

18 In considering whether possession of recently
19 stolen property has been satisfactorily explained, you
20 are reminded that, in the exercise of constitutional
21 rights, the accused need not take the witness stand
22 and testify.

23 There may be opportunities to explain possession
24 by showing other facts and circumstances, independent
25 of the testimony of the accused.

Charge of the Court

You will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

It is the exclusive province of the jury to determine whether the facts and circumstances shown by the evidence in the case warrant any inference which the law permits you to draw from possession of recently stolen property. If any possession the accused may have had of recently-stolen property is equally consistent with innocence, or if you entertain a reasonable doubt of guilt, you must acquit the accused.

Now, of course, one of the key elements in the case is the question of possession, whether the accused had the possession of the merchandise.

The law recognizes two kinds of possession: actual possession and constructive possession. A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, knowingly has both the power and the intention, at a

9 1 Charge of the Court

2 given time, to exercise dominion or control over a
3 thing, either directly or through other person or
4 persons, is then in constructive possession of it.

5 The law recognizes also that possession may be
6 sole or joint. If one person alone has actual or
7 constructive possession of a thing, possession is sole.
8 If two or more persons share actual or constructive
9 possession of a thing, possession is joint.

10 You may find that the element of possession as
11 that term is used in these instructions is present if
12 you find that beyond a reasonable doubt that the
13 defendant had actual or constructive possession, either
14 alone or jointly with others.

15 An act or failure to act is "knowingly" done,
16 if done voluntarily and intentionally, though not
17 because of mistake or accident or other innocent
18 reason.

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20 (continued next page)

Now, I talked to you a moment ago, I read to you a moment ago, Section 2 of Title 18 of the United States Code, the so-called Aiding and Abetting Section, and I will reread it to you, because that is applicable to Count One.

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

"Whoever wilfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

The guilt of a defendant may be established without proof that the accused personally did every act constituting the offense charged.

In other words, every person who wilfully participates in the commission of a crime may be found guilty of that offense. Participation is wilful if done voluntarily and intentionally, and with a specific intent to do something the law forbids, or with a specific intent to fail to do something the law requires to be done; that is to say, with bad purpose, either to disobey or to disregard the law.

2 In order to aid and abet another to commit a
3 crime, it is necessary that the accused wilfully
4 associate himself in some way with the criminal
5 venture, and wilfully participate in it as he would
6 in something he wishes to bring about; that is to say,
7 that he wilfully seek by some act or omission of his
8 to make the criminal venture succeed.

9 An act or omission is "wilfully done," if done
10 voluntarily and intentionally and with the specific
11 intent to do something the law forbids, or with the
12 specific intent to fail to do something the law
13 requires to be done. that is to say, with bad purpose
14 either to disobey or to disregard the law.

15 You, of course, may not find any defendant
16 guilty unless you find beyond a reasonable doubt that
17 every element of the offense as defined in these
18 instructions was committed by some person or persons,
19 and that the defendant participated in its commission.

20 To determine that, ask yourself, "Did he
21 associate himself with the venture?

22 "Did he participate in something he wished to
23 bring about?

24 "Did he seek by his action to succeed?"

25 If he did, he is an aider or abettor.

5 Mere presence at the scene of the crime and
6 knowledge that a crime is being committed are not
7 sufficient to establish that the defendant aided and
8 abetted the crime, unless you find beyond a reasonable
9 doubt that the defendant was a participant and not
10 merely a spectator.

Now, I have charged you with respect to the law
as to actual and constructive possession, either alone
or jointly with others, and the law with respect to
possession of property recently stolen and the
inference you may but are not required to draw there-
from, that the person in possession knew the property
had been stolen, and also with respect to the law
as to aiding and abetting in the commission of crime.

21 Bear in mind that if you find one of the
22 defendants had actual or constructive possession of
23 recently stolen property, you may, but are not required
24 to draw the inference, that he knew the property had
25 been stolen.

2 But, at the same time, if you do not so find
3 that the other defendant had actual or constructive
4 possession jointly with the first defendant or solely
5 by himself, but merely find that he aided and
6 abetted the first defendant, then you may not infer
7 that such an aider and abettor of the person in
8 possession of recently stolen property knew the
9 property had been stolen. In other words, to draw
10 such an inference, you must first find that the
11 particular defendant had actual or constructive
12 possession either alone or jointly with another of
13 recently stolen property. You may not draw such an
14 inference with respect to one who is merely an aider
15 and abettor of one who had such actual or constructive
16 possession.

17 Now, it is charged in Count Two of the indict-
18 ment, and this is the conspiracy count, that "On or
19 about and between the third day of March, 1972 and
20 the 6th day of March, 1972, both dates being approxi-
21 mate and inclusive, within the Eastern District of
22 New York, the defendant Gerald Allicino and the
23 defendant Seymour Rosenwasser, along with others known
24 and unknown to the Grand Jury, did knowingly and
25 wilfully conspire to commit an offense against t

5 1 Charge of the Court

2 United States in violation of Title 18, Section 659,
3 by conspiring to knowingly and intentionally have
4 in their possession a quantity of ladies' garments
5 having a value in excess of a hundred dollars, which
6 garments, being stolen in 1972 from a motor truck
7 belonging to the Arlene Knitwear Company in Brooklyn,
8 New York, while it was moving as a part of an inter-
9 state shipment of freight from New York to New Jersey,
10 the defendants Gerald Allicino and Seymour
11 Rosenwasser knowing them to have been stolen, in
12 furtherance of the act and in furtherance to effect
13 the objective thereof.

14 The defendants Gerald Allicino and Seymour
15 Rosenwasser committed, among others, the following
16 overt acts:

17 One, on or about March 6, 1972, within the
18 Eastern District of New York, the defendant Gerald
19 Allicino and the defendant Seymour Rosenwasser met
20 in Brooklyn, New York, all in violation of Title 18,
21 United States Code, Section 371, which provides in
22 pertinent part that:

23 "If two or more persons conspire to commit any
24 offense against the United States and one or more of
25 such persons do any act to effect the object of the

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Charge of the Court

2 conspiracy, each" is guilty of an offense against the
3 United States.

4 The following are the essential elements which
5 are required to be proven beyond a reasonable doubt
6 in order to establish the offense of conspiracy in
7 the indictment:

8 One, that there was an agreement or conspiracy
9 between two or more persons to violate the law as
10 charged in the indictment;

11 Two, that the conspiracy described in the
12 indictment was wilfully formed and existed at or about
13 the time alleged;

14 Three, that the conspiracy was so wilfully
15 formed and existing for the purpose of knowingly and
16 wilfully receiving and having in the possession of
17 the accused, goods or merchandise unlawfully taken
18 from a motor truck or other vehicle, which goods or
19 merchandise had been moving as a part of or which
20 constituted an interstate shipment of property and
21 had a value in excess of \$100, the accused knowing
22 the same to have been stolen;

23 Four, that the accused wilfully became a member
24 of the conspiracy;

25 Five, that one of the conspirators thereafter

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7 Charge of the Court

610

knowingly committed one of the overt acts charged in
the indictment at or about the time and place alleged;

Six, that such overt act was knowingly done
in furtherance of the object of the conspiracy as
charged;

And seven, that the accused was knowingly and
wilfully a member of the conspiracy, with the intent
to further one of its objectives.

If the jury should find beyond a reasonable
doubt from the evidence in the case that existence of
the conspiracy charged in the indictment has been
proved, and that during the existence of the conspiracy,
one of the overt acts alleged was knowingly done by
one or more of the conspirators in furtherance of
some object or purpose of the conspiracy, then proof
of the conspiracy offense charged is complete, and
it is complete as to every person found by the jury
to have been wilfully a member of the conspiracy at
the time the overt act was committed.

Now, conspiracy is a combination of two or more
persons, by concerted action, to accomplish some
unlawful purpose. So, a conspiracy is a kind of
"partnership in criminal purposes," in which each
member becomes the agent of every other member. The

2 gist of the offense is a combination or an agreement
3 to disobey or to disregard the law.

4 Mere similarity of conduct among various persons,
5 and the fact they may have associated with each other,
6 and may have assembled together and discussed common
7 aims and interests, does not necessarily establish
8 proof of the existence of a conspiracy. Mere associa-
9 tion may not in and of itself be the basis for an
10 inference of guilt of conspiracy.

11 However, the evidence in the case need not
12 show that the members entered into any express or
13 formal agreement, or that they directly, by words
14 spoken or in writing, stated between themselves what
15 their object or purpose was to be, or the details
16 thereof, or the means by which the object or purpose
17 was to be accomplished. What the evidence in the case
18 must show, beyond a reasonable doubt, in order to
19 establish proof that a conspiracy existed, is that the
20 members in some way or manner, or through some contri-
21 vance, positively or tacitly, came to a mutual
22 understanding to try to accomplish a common and unlaw-
23 ful plan.

24 The evidence in the case need not establish that
25 all the means or methods set forth in the indictment

Charge of the Court

were agreed upon to carry out the alleged conspiracy; nor that all means or methods, which were agreed upon, were actually used to put into operation; nor that all of the persons charged to have been members of the alleged conspiracy were such.

What the evidence in the case must establish beyond a reasonable doubt is that the alleged conspiracy was knowingly formed and that one or more of the means or methods described in the indict were agreed upon to be used, in an effort to effect or accomplish some object or purpose of the conspiracy, as charged in the indictment; and that two or more persons, including the accused, were knowingly members of the conspiracy, as charge in the indictment.

(Continued on next page.)

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Charge

613

2 THE COURT: (Continuing.) In your consideration
3 of the evidence in the case as to the offense of
4 conspiracy charged, you should first determine whether
5 or not the conspiracy existed, as alleged in the
6 indictment. If you conclude that the conspiracy did
7 exist, you should next determine whether or not each
8 of the accused willfull became a member of the
9 conspiracy.

10 If it appears beyond a reasonable doubt from
11 the evidence in the case that the conspiracy alleged
12 in the indictment was willfully formed, and that the
13 defendants lawfully became a member of the conspiracy
14 either at its inception or afterwards, and that there-
15 after one or more of the conspirators committed one
16 or more overt acts in furtherance of some object or
17 purpose of the conspiracy, then there may be a
18 conviction even though the conspirators may not have
19 succeeded in accomplishing their common object or
20 purpose and in fact may have failed so doing.

21 The extent of any defendant's participation,
22 moreover, is not determinative of his guilt or
23 innocence. A defendant may be convicted as a
24 conspirator even though he may have played only a
25 minor part in the conspiracy.

2 An "overt act" is an act knowingly committed by
3 one of the conspirators, in an effort to effect or
4 accomplish some object of purpose of the conspiracy.

5 The overt act need not be criminal in nature, if
6 considered separately and apart from the conspiracy.

7 It may be as innocent as the act of a man walking
8 across the street or driving an automobile or using a
9 telephone. It must, however, be an act which follows
10 and tends toward accomplishment of the plan or
11 scheme, it must be knowingly done in furtherance of
12 some object or purpose of the conspiracy charged in
13 the indictment. It is not necessary that all of the
14 overt acts charged in the indictment were performed.
15 One overt act is sufficient.

16 One may become a member of the conspiracy
17 without full knowledge of all the details of the
18 conspiracy. On the other hand, a person who has no
19 knowledge of a conspiracy, but happens to act in a way
20 which furthers some object or purpose of the conspiracy,
21 does not thereby become a conspirator.

22 Before the jury may find that one or more of
23 the defendants or any other person has become a member
24 of the conspiracy, the evidence in the case must show
25 beyond a reasonable doubt that the conspiracy was

2 knowingly formed, and that said defendant or other
3 person who has claimed to have been a member, willfully
4 participated in the unlawful plan, with the intent to
5 advance or further some object or purpose of
6 conspiracy.

7 To act or participate willfully means to act
8 or participate voluntarily or intentionally and with
9 specific intent to do something the law forbids, that
10 is to say, the act or participate with the bad purpose
11 either to disobey or to disregard the law.

12 So, if a defendant or any other person, with
13 understanding of the unlawful character of the plan,
14 knowingly encourages, advises or assists, for the
15 purpose of furthering the undertaking or scheme, he
16 thereby becomes a willful participant, a conspirator.

17 One who willfully joins in an existing conspiracy
18 is charged with the same responsibility as if he had
19 been one of the originators or instigators of the
20 conspiracy.

21 In determining whether a conspiracy existed,
22 the jury should consider the actions and the
23 declarations of all the alleged participants. However,
24 in determining whether a particular defendant was a
25 member of a conspiracy, if any, the jury should consider

4 1 Charge

2 only his acts and statements. He cannot be bound by
3 the acts or declarations of other participants until
4 it is established that a conspiracy existed, and that
5 he was one of its members.

6 Whenever it appears beyond a reasonable doubt
7 from the evidence in the case that a conspiracy
8 existed, and that a defendant was one of the members,
9 then the statements thereafter knowingly made and the
10 acts knowingly done, by any person, likewise found
11 to be a member, may be considered by the jury as
12 evidence in the case as to the defendants found to
13 have been a member, even though the statements and
14 acts made may have occurred in the absence and without
15 the knowledge of the defendant, provided such statements
16 and acts were knowingly made and done during the
17 continuancy of such conspiracy, and in furtherance of
18 some object or purpose of the conspiracy.

19 Otherwise, any admission or incriminator
20 statement made or act done outside the Court, by one
21 person, may not be considered as evidence against any
22 person who was not present and did not hear the
23 statement made or see this act done.

24 Therefore, any statement of any conspirator
25 which are not in furtherance of the conspiracy or made

2 before its existence or after its termination, may be
3 considered as evidence only against the person making
4 them.

5 Now, the indictment charges the conspiracy
6 among two defendants, Allicino and Rosenwasser, and
7 also others known and unknown to the grand jury all
8 named in the indictment as co-conspirators. A person
9 cannot conspire with himself, and therefore you cannot
10 find any of the defendants guilty unless you find
11 beyond a reasonable doubt that any such defendant
12 participated in the conspiracy as charged with at
13 least one other person. With this qualification you
14 may find both of the defendants guilty or one of the
15 defendants guilty or one of the defendants guilty and
16 one of the defendants not guilty or both not guilty,
17 all in accordance with these instructions and the facts
18 you find.

19 An act is done "knowingly" if done voluntarily
20 and intentionally, and not because of mistake or
21 accident or other innocent reason.

22 The purpose of adding the word "knowingly" was
23 to insure that no one would be convicted for an act
24 done because of mistake, or accident or other innocent
25 reason.

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Charge

2 As stated before, with respect to an offense
3 such as charged in this case, specific intent must be
4 proved beyond a reasonable doubt before there can be
5 a conviction.

6 An act is done "willfully" if done voluntarily
7 and intentionally and with the specific intent to do
8 something the law forbids; that is to say, with bad
9 purpose either to disobey or to disregard the law.

10 The knowledge and intent ordinarily may not be
11 proved directly, because there is no way of fathoming
12 or scrutinizing the operations of the human mind.

13 But you may infer a defendant's knowledge and
14 intent from the surrounding circumstances. You may
15 consider any statement made and done or omitted by a
16 defendant, and all other facts and circumstances in
17 evidence which indicate his state of mind. It is
18 ordinarily reasonable to infer that a person intends
19 the nature and probable consequences of acts knowingly
20 done or knowingly omitted.

21 Now, there was proof in this case which was
22 admitted solely -- I should say there was evidence in
23 this case admitted solely against the defendant
24 Allicino, namely the possession of recently stolen
25 liquor, knowing the same to have been stolen sometime

2 shortly after the events alleged in the indictment.

3 Now, this special instruction, which I said I
4 would give you on this point reads as follows:

5 The fact that the defendant, Allicino, may have
6 committed another offense at some time is not any
7 evidence or proof whatever that, at a prior time, the
8 accused committed the offense charged in the indict-
9 ment, even though both defenses are of a like nature.
10 Evidence as to an alleged earlier or later offense of
11 a like nature may not therefore be considered by the
12 jury, in determining whether the accused did the act
13 charged in the indictment. Nor may such evidence be
14 considered for any other purpose whatever, unless
15 the jury first finds that other evidence in the case,
16 standing alone, establishes beyond a reasonable doubt
17 that the accused did the act charged in the indictment,
18 leaving aside only the question of whether he did it
19 knowingly and willfully.

20 If the jury should find beyond a reasonable
21 doubt from the other evidence in the case that the
22 accused, Allicino, did the acts charged in the
23 indictment, then the jury may consider evidence as to
24 an alleged earlier or later offense of a like nature,
25 in determining the state of mind, knowledge or intent

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Charge

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2 with which the accused did the acts charged in the
3 indictment. And where all the elements of an alleged
4 earlier or later offense of a like nature are
5 established by evidence which is clear and conclusive,
6 the jury may, but is not obliged to, draw the
7 inference and find that in doing the act charged in
8 the indictment, the accused, Allicino, acted willfully,
9 knowingly, and with specific intent, and not because of
10 mistake or accident or other innocent reason.

11 (Continued next page.)

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Statements and arguments of counsel are not evidence in the case, unless made as an admission or stipulation of fact. When the attorneys on both sides stipulate or agree as to the existence of a fact you must, unless otherwise instructed, accept the stipulation as evidence, and regard that fact as proved.

The Court may take judicial notice of certain facts or events. When the Court declares it will take judicial notice of some fact or event, you may accept the Court's declaration as evidence, and regard as proved the fact or event which has been judicially noticed, but you are not required to do so, since you are the sole judges of the facts.

Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them; and all exhibits received in evidence, regardless of who may have produced them, and all facts which may have been admitted or stipulated; and all facts and events which may have been judicially noticed; and all applicable presumptions stated in these instructions.

Any evidence as to which an objection was sustained by the Court, and any evidence ordered stricken

by the Court, must be entirely disregarded.

Evidence does include, however, what is brought out from witnesses on cross-examination, as well as what is testified to on direct examination.

Unless you are otherwise instructed, anything you may have seen or heard outside the courtroom is not evidence, and must be entirely disregarded.

You are to consider only the evidence in the case, and your verdict is to be based on the evidence only. But, in your consideration of the evidence, you are not limited to the bald statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proved, such reasonable inferences as you feel are justified in the light of experience.

Inferences are deductions or conclusions which reason and common sense lead the jury to draw from facts which have been established by the evidence in the case.

If a lawyer asks a witness a question which contains an assertion of fact, you may not consider the assertion as evidence of that fact. The lawyers' statements are not evidence.

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2 You, as jurors, are the sole judges of the cre-
3 dibility of the witnesses and the weight their testimony
4 deserves.

5 You should carefully scrutinize all the testi-
6 mony given, the circumstances under which each witness
7 has testified, and every matter in evidence which
8 tends to show whether a witness is worthy of belief.
9 Consider each witness's intelligence, motive and state
10 of mind, and demeanor and manner while on the stand.
11 Consider the witness's ability to observe the matters
12 as to which he has testified and whether he impresses
13 you as having an accurate recollection of these matters.
14 Consider also any relation each witness may bear to
15 either side of the case; the manner in which each
16 witness might be affected by the verdict; and the
17 extent to which, if at all, each witness is either
18 supported or contradicted by other evidence in the
19 case.

20 Inconsistencies or discrepancies in the testi-
21 mony of a witness, or between the testimony of differ-
22 ent witnesses, may or may not cause the jury to dis-
23 credit such testimony. Two or more persons witnessing
24 an incident or a transaction may see or hear it
25 differently, and innocent misrecollection, like

Charge of the Court

failure of recollection, is not an uncommon experience.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such credibility, if any, that you may think it deserves.

An accomplice is one who united with another person in the commission of a crime, voluntarily and with common intent.

An accomplice does not become incompetent as a witness because of participation in the crime charged. On the contrary, the testimony of an accomplice alone, if believed by the jury, may be of sufficient weight to sustain a verdict of guilty, even though not corroborated or supported by other evidence.

However, the jury should keep in mind that such testimony is always to be received with great caution and weighed with great care.

You should never convict a defendant upon the unsupported testimony of an alleged accomplice, unless you believe that unsupported testimony beyond

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2 a reasonable doubt.
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4 The law does not permit the use of an accomplice,
5 but whether you approve of their use is not to enter
6 into your consideration of this case. In certain
7 types of crime, the Government of necessity is frequently
8 compelled to rely upon the testimony of accomplices,
9 persons with criminal records, or informers. Other-
10 wise, it would be difficult to detect or prosecute
11 some wrongdoers, and this is particularly true in
12 conspiracy cases. Often it has no choice in the matter.
13 It must take the witnesses to the transaction as they
14 are.
15

16 It is the universal rule in the Federal Courts
17 that defendants may be convicted on testimony of an
18 accomplice standing alone if you believe such testimony
19 beyond a reasonable doubt. This would be so even though
20 the accomplice was a confirmed criminal.
21

22 There are several other persons whose names you
23 have heard during the course of this trial, and one or
24 more of the attorneys have referred to their absence
25 from this trial. Neither of the defendants, nor the
Government may benefit from the absence of such witnesses
or possible witnesses because each side has an equal
opportunity or lack of opportunity to have them testify.

2 If either side had wanted any of them here, so far as
3 the record shows, they had equal opportunity to get
4 them and absence should not affect your judgment in
5 passing on this case or in determining the guilt or
6 innocence of the defendants.

7 Bear in mind, of course, that the law never
8 imposes upon the defendant in a criminal case the burden
9 of producing or calling any witnesses or producing any
10 evidence.

11 The testimony of a witness may be discredited
12 or impeached by showing that he previously made state-
13 ments which are inconsistent with his or her present
14 testimony. The earlier contradictory statements are
15 admissible only to impeach the credibility of the
16 witness, and not to establish the truth of these
17 statements. It is the province of the jury to deter-
18 mine the credibility, if any, to be given the testimony
19 of a witness who has been impeached.

20 If a witness is shown knowingly to have testi-
21 fied falsely concerning any material matter, you have
22 a right to distrust such witness's testimony in other
23 particulars, and you may reject all the testimony of
24 that witness or give it such credibility as you may
25 think it deserves.

A defendant who wishes to testify, however,
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3 is a competent witness; and the defendant's testimony
4 is to be judged in the same way as that of any other
5 witness.

6 The law permits a defendant at his own request
7 to testify on his own behalf. The testimony of an
8 individual defendant is before you. You must deter-
9 mine how far it is credible. The deep personal
10 interest which every defendant has in the result of
11 his case should be considered in determining the
12 credibility of his testimony. You are instructed
13 that interest creates a motive for false testimony;
14 that the greater the interest the stronger is the
15 temptation, and that the interest of a defendant is
16 of a character possessed by no other witness and is,
17 therefore, a matter which may seriously affect the
18 credence that should be given to his testimony.

19 The law does not compel a defendant in a
20 criminal case to take the witness stand and testify,
21 and no presumption of guilt may be raised, and no
22 inference of any kind may be drawn from the failure
23 of a defendant to testify.

24 As stated before, the law never imposes upon
25 a defendant in a criminal case the burden or duty
of calling any witnesses or producing any evidence.

2 Now, there has been testimony here to the pre-
3 vious good character of the defendant Rosenwasser.
4 You should consider such evidence of character together
5 with all the other facts with respect to the guilt or
6 innocence of the defendant Rosenwasser. Evidence of
7 good character may in and of itself create a reasonable
8 doubt where, without such evidence, no reasonable
9 doubt would have existed.

10 But if on all the evidence you are satisfied
11 beyond a reasonable doubt that the defendant Rosenwasser
12 is guilty, a showing that he had previously enjoyed
13 a reputation of good character does not justify or
14 excuse the offense, and you should not acquit the
15 defendant Rosenwasser merely because you believe he
16 is a person of good repute.

17 It may be those with whom the defendant Rosen-
18 wasser came in contact previously were misled, and
19 that the defendant Rosenwasser did not reveal to them
20 his true character.

21 The testimony of a character witness is not
22 to be regarded by you as expressing the witness's
23 personal opinion of the defendant Rosenwasser's
24 character, nor is it to be taken by you as the witness's
25 opinion as to the guilt or innocence of the defendant

Rosenwasser.

The guilt or innocence of both defendants for
you and you alone to determine.

(Continued on next page.)

2 It is the duty of the attorney on each side
3 of the case to object when the other side offers
4 testimony or other evidence which the attorney believes
5 is not properly admissible. You should not show
6 prejudice against an attorney or his client because
7 the attorney has made objections.

8 Upon allowing testimony or other evidence to
9 be introduced over the objection of an attorney, the
10 Court does not, unless expressly stated, indicate any
11 opinion as to the weight or effect of such evidence.

12 As stated before, the jurors are the sole
13 judges of the credibility of all witnesses and the
14 weight and effect of all evidence.

15 When the Court has sustained an objection to a
16 question addressed to a witness, the jury must disre-
17 gard the question entirely and may draw no inference
18 from the wording of it or speculate as to what the
19 witness would have said if he had been permitted to
20 answer any question.

21 The fact that the Court has asked one or more
22 questions of a witness for clarification or admissi-
23 bility of evidence is not to be taken by you in any
24 way as indicating that the Court has any opinion as
25 to the guilt or innocence of the defendant in this case.

2 and you are to draw no such inference therefrom.

3 That determination is up to you and you alone,
4 based on all the facts in the case, based on the
5 applicable law in these instructions.

6 You are here to determine the guilt or innocence
7 of the accused from the evidence in the case. You are
8 not called upon to return a verdict as to the guilt
9 or innocence of any other person or persons. So, if
10 the evidence in the case convinces you beyond a
11 reasonable doubt of the guilt of the accused, you
12 should so find, even though you may believe one or
13 more other persons are guilty. But, if any reasonable
14 doubt remains in your minds after impartial considera-
15 tion of all the evidence in the case, it is your duty
16 to find the accused not guilty.

17 The verdict must represent the considered
18 judgment of each juror. In order to return a verdict,
19 it is necessary that each juror agree thereto. Your
20 verdict must be unanimous.

21 It is your duty as jurors to consult with one
22 another and to deliberate with a view to reaching
23 an agreement, if you can do so, without violence to
24 individual judgment. Each of you must decide the
25 case for himself and herself, but do so only after an

2 impartial consideration of the evidence in the case
3 with your fellow jurors.

4 In the course of your deliberations, do not
5 hesitate to re-examine your own views and change your
6 opinion, if convinced it is erroneous, but do not
7 surrender your honest conviction as to the weight or
8 effect of evidence solely because of the opinion of
9 your fellow jurors or for the mere purpose of returning
10 a verdict.

11 Remember at all times you are not partisans,
12 you are judges -- judges of the facts. Your sole
13 interest is to seek the truth from the evidence in
14 the case.

15 There is nothing peculiarly different in the
16 way a jury should consider the evidence in a criminal
17 case from that in which all reasonable persons treat
18 any person, depending upon evidence presented to them.
19 You are expected to use your good sense, consider the
20 evidence in the case for only those purposes for which
21 it has been admitted and give it a reasonable and
22 fair construction, in the light of your common know-
23 ledge of the natural tendencies and inclinations of
24 human beings.

25 If the accused be guilty beyond a reasonable

4 1 Charge of the Court

2 doubt, say so; if not so proven guilty, say so.

3 You must render a verdict with respect to each
4 of the two counts and with respect to each of the
5 two defendants. If you fail to find beyond a reason-
6 able doubt that the law has been violated, you should
7 not hesitate for any reason to find a verdict of
8 acquittal.

9 On the other hand, if you find that the law
10 has been violated, there should be no sympathy or
11 any other reason not to render a verdict of guilty.

12 If any reference by the Court or by counsel to
13 matters of evidence does not coincide with your
14 recollection, it is your recollection which should
15 control during your deliberations.

16 The punishment provided by law for the offenses
17 charged in the indictment is a matter exclusively
18 within the province of the Court, and should not
19 be considered by the jury in any way in arriving at
20 an impartial verdict as to the guilt or innocence of
21 the accused.

22 Upon retiring to the jury room, the lady seated
23 nearest me will act as Forelady. If she chooses not
24 to do so, then you will elect a Foreman or Forelady.
25 The Foreman or Forelady will preside over your

2 deliberations and will be your spokesman here in
3 court.

4 If it becomes necessary during your delibera-
5 tions to communicate with the Court, you may send
6 a note by a Deputy Marshal signed by your Forelady
7 or by one or more members of the jury. No member of
8 the jury should ever attempt to communicate with the
9 Court by any means other than a signed writing, and
10 the Court will never communicate with any member of
11 the jury on any subject touching the merits of the
12 case, otherwise than in writing or orally here in
13 open court.

14 You will note from the oath which will be taken
15 shortly by the Deputies that they, too, as well as
16 all other persons, are forbidden to communicate in
17 any way or manner with any member of the jury on any
18 subject touching the merits of the case.

19 Now, remember what I said, that your verdict
20 must be unanimous.

21 Bear in mind also that you are never to reveal
22 to any person -- not even to the Court -- how the
23 jury stands, numerically or otherwise, on the question
24 of the guilt or innocence of the accused, until after
25 you have reached a unanimous verdict.

2 In other words, you are not to write any notes
3 in which you say: We stand thus or so, one way or the
4 other, what do we do now, Judge?

5 If you do that, then I may have to declare a
6 mistrial and this case may have to be retried.

7 When and if you reach a unanimous verdict, you
8 write me a note and state you have reached a verdict.
9 You announce your verdict here in open court. If,
10 as and when a time should arrive when you become
11 hopelessly deadlocked, you can write me a note. I
12 hope that doesn't happen.

13 Those are the instructions of the Court. We
14 are going to take approximately five minutes while I
15 discuss certain matters with the attorneys, and then
16 I will re-call you.

17 At that time the alternates will be discharged
18 and they will either proceed to my witness room to
19 have their lunch or they will be going about their
20 way, and thereafter you may begin your deliberations,
21 but not until then.

22 In this five-minute recess, don't discuss the
23 case.

24 (Whereupon, the jury left the courtroom at
25 12:45 p.m.)

1 THE COURT: Mr. Levin-Epstein?

2 MR. LEVIN-EPSTEIN: The charge is satisfactory
3 to the Government, your Honor. You did misspeak, I
4 think, only one word. I don't think it's significant
5 enough to mention to the jury as to the portion of
6 your charge where you indicate to the jury that if
7 it becomes necessary for them to communicate with the
8 Court you may send a note signed by your Forelady to
9 the Marshal. I think you inadvertently had occasion
10 to speak to and you said to the jury, it has to be
11 a signed note. I don't think that's important enough.

12 MR. NEWMAN: I didn't hear that.

13 Judge, may I ask you to read the section to
14 Aiding and Abetting, twice to the jury?

15 THE COURT: I did. Once when I read the
16 statute as a whole, 659 and Section 2, and then once
17 sometime later when I described what was meant by
18 aiding and abetting.

19 MR. NEWMAN: Your Honor, I object to that. I
20 have no other objection or exceptions to the charge.

21 THE COURT: I find it very difficult to do it
22 otherwise, and I have experimented with it over a
23 period of time and I think that's the only way.

24 MR. WALLACH: I join in the exception.

25 MR. NEWMAN: Judge --

1 THE COURT: Anything else, Mr. Wallach?

2 MR. WALLACH: Nothing else, your Honor.

3 MR. NEWMAN: Your Honor, just a little house-
4 keeping. You will notice or you may have that a lot
5 of cheese exhibits came from the Government from
6 various trials. I have no objection to them going
7 to the jury if they obscure the other markings.

8 THE COURT: You can't do that.

9 MR. LEVIN-EPSTEIN: No, we can't peel them off.

10 MR. NEWMAN: Is there a possible way of covering
11 them?

12 THE COURT: You can't, because he's got to have
13 them for appeals. That's the problem.

14 MR. NEWMAN: Can I suggest just a strip of
15 white paper, for example, crossing them with some
16 scotch tape.

17 MR. LEVIN-EPSTEIN: I have no objection.

18 MR. NEWMAN: I just don't want them to start
19 wondering.

20 THE COURT: I think it's a fair statement.

21 MR. LEVIN-EPSTEIN: I don't object to it being
22 obscured.

23 MR. NEWMAN: Just by some white paper that
24 can be removed.

25 MR. LEVIN-EPSTEIN: Why don't we cross that

1 bridge when we came to it?

2 MR. NEWMAN: Fine. Unless you can save some
3 time.

4 MR. LEVIN-EPSTEIN: There is a lot to cover.

5 THE COURT: I am going to let you go to lunch
6 right now, and tell the jury to hold any notes until
7 two o'clock. Do you want to bring them in?

8 (Whereupon, the jury enters the courtroom at
9 12:50 p.m.)

10 THE COURT: Now, ladies and gentlemen, I should
11 address myself first to the alternates. Your time has
12 come, your services are no longer needed, only to the
13 fact that all your fellow jurors have been so healthy
14 and taken such good care of themselves over this past
15 weeek, and they are here to deliberate. You go with
16 the thanks of the Court for your attention to the case
17 and for your promptness on each of the occasions when
18 you have been called upon to be here. You have
19 been fantastic alternates, but you don't go to the
20 actual deliberations, but on the other hand, you do
21 serve a very valuable purpose, and you do go with
22 the thanks of the Court.

23 For those of you who have ordered lunch, what
24 you should do is pick up your belongings now from
25 the jury room, go out the back, go around, and on your

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA :
5 -against- :
6 GERALD ALLICINO, true name, : 75 CR 278
7 GERARD ALLICINO, :
8 Defendant.
9 -----x
10
11 United States Courthouse
12 Brooklyn, New York
13 May 20, 1976
14 10:00 a.m.
15 Before :
16 HONORABLE THOMAS C. PLATT, U.S.D.J.
17
18
19
20
21
22 STEVEN TESSLER
23 ACTING OFFICIAL COURT REPORTER
24
25

2 Appearances:

3 DAVID G. TRAGER, ESQ.
4 United States Attorney
for the Eastern District of New York5 BY: ETHAN LEVIN-EPSTEIN, ESQ.
6 Assistant United States Attorney

7

8 GUSTAVE H. NEWMAN, ESQ.
9 Attorney for Defendant

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1 THE COURT: Mr. Newman, is there any reason
2 we shouldn't proceed with sentencing this morning?

3 MR. NEWMAN: By way of housekeeping, at the
4 conclusion of the trial, your Honor gave me the
5 letter today to make my post-trial motion, if I had
6 anything of substance, to do it on papers. By
7 absence of papers I just make the classic Rule 29
8 motion for acquittal.

9 THE COURT: I have to deny the motion.

10 MR. NEWMAN: There are no other reasons that
11 the defendant is not ready for sentence. I have
12 read the pre-sentence report together with the
13 defendant.

14 THE COURT: This is a companion case, when
15 is that on? Tomorrow?

16 MR. NEWMAN: That is tomorrow, sir.

17 THE COURT: Mr. Allicino, is there any reason
18 why we shouldn't proceed with the sentence?

19 THE DEFENDANT: No, sir.

20 THE COURT: You wish to say something,
21 Mr. Newman?

22 MR. NEWMAN: I know your Honor has read my
23 pre-sentence report. Most of my remarks in my
24 arguments are really contained in that report. I
25 would just indicate to your Honor by way of emphasis,

1 the defendant is about to celebrate his 50th birthday
2 on Sunday. I am troubled by a concept as to what
3 useful purpose it would be served by sending him back
4 to jail.

5 Your Honor knows the arguments I have advanced
6 concerning his prior involvement, concerning his
7 having served time. He has completed on May 10 his
8 probationary period. The daughter, who is referred
9 to in the Pre-Sentence Report, is here in court with
10 her husband. He has found a new attachment of life,
11 he has reached 50 years of age, I wouldn't -- if we
12 can't make a calculated risk and make him a master of
13 his fate, the last three years as he has. I've
14 considered your Honor making him the master of his
15 own fate at 50, if he goofs, Judge, he is back in the
16 slammer, in plain English. If by this stage in life
17 he hasn't straightened, then he deserves to be in
18 a jail. It's really the way I feel about Allicino
19 and this entire situation.

20 THE COURT: Do you wish to say something,
21
22 Mr. Levin-Epstein?

23 MR. LEVIN-EPSTEIN: Nothing, your Honor, except
24 to of course recall that this event on which
25 Mr. Allicino was tried. A period of 28 days for which
he was on probation. The Government takes no

1 position with the actual being, within the province
2 of the Court.

3 THE COURT: Mr. Allicino, do you wish to say
4 anything?

5 THE DEFENDANT: What can I say, your Honor,
6 my future is in your hands.

7 MR. LEVIN-EPSTEIN: By my remarks I meant to
8 emphasize, not that there is another prior event, but
9 to emphasize that the event for which Mr. Allicino
10 was on trial occurred prior to the events for which
11 he has already been sentenced on the other events,
12 not so much to indicate that it was in aggravation,
13 if I am making myself clear.

14 THE COURT: No, you are not.

15 MR. LEVIN-EPSTEIN: My only point being the
16 events he was on trial for here, the record will
17 show, occurred prior to the time of the events which
18 he had already been sentenced on the other matter.

19 THE COURT: You're suggesting whatever judge
20 sentenced him on the other matter took into considera-
21 tion when he imposed the sentence on that other
22 matter this -- the facts in this case.

23 MR. LEVIN-EPSTEIN: I don't know, your Honor,
24 it's not indicated from my investigation of it, but
25 I don't know the --

1 MR. NEWMAN: I don't think he could have,
2 because I don't think anybody told him about it.
3 I wish he could have disposed of it even if it
4 resulted in more time, at least he would have com-
5 pleted his time and he would have had a life in
6 front of him. Instead of getting out, made a new
7 life and had it interrupted again.

20 MR. NEWMAN: May I just make a comment, your
21 Honor, I certainly can't argue with the second portion
22 of your Honor's statement, that is your view and
23 certainly you are entitled to it.

1 indicating that this can be taken out of the whole
2 part of cases and treated separately.

3 We have a man that was involved in the same
4 period of -- in March at the same premises, maybe on
5 a different floor. He came forward, he pleaded
6 guilty at that particular moment. Had anybody even
7 said it to the FBI agent, he would have got additional
8 time and I couldn't quarrel with it then. Not so much
9 by virtue of him having done two things in one month,
10 he should be given -- what is the useful purpose
11 had they known about all of this and had they given
12 him two years, or three years and it would have been
13 finished.

14 If he finished his parole, or probation, he
15 would have paid his debt. But no facts he had
16 control over, he served his sentence, he has sat
17 on May 10, finished his period of probation. I am
18 wondering if that makes sense, Judge. That is what
19 I am directing my argument to.

20 THE COURT: It's one factor, Mr. Newman, which
21 weighs very heavily on me. There is many factors
22 that come into the fact when you asked for time to
23 speak, if it was just that one factor that was
24 involved of course I would go along with you and I
25 would agree with you and I think that factor is an

1 important fact, but it's not the only factor that
2 the problem that faces me is, what I am trying to
3 say to you. I have to weigh that fact along with all
4 the other factors and I don't really see that I can
5 just give him a straight probation, is what you ask
6 for.

7 But, I will fine tailor it so it's not as bad
8 as it might have been had the circumstances pertained
9 in this particular case. So, it's adjudged pursuant
10 to 18 U.S.C.A., Section 3651, that the defendant is
11 hereby committed to the custody of the Attorney
12 General for a term of three years, on condition that
13 the treatment institution for a period of eight months.
14 The exclusion of the remainder of the sentence is
15 hereby suspended and the defendant placed on probation
16 for a period of three years, and the defendant shall
17 pay a fine to the United States in the sum of \$2500.

18 That is on Count One and the same sentence is
19 imposed on Count Two, to be served concurrently.

20 It's adjudged 18 U.S.C.A., that the defendant
21 hereby is authorized represented for imprisonment for
22 a term of three years, that condition to be for a
23 period of eight months and exclusion of the remainder
24 of sentence of prison is hereby suspended and
25 defendant placed on probation for three years and

1 should pay a fine to the United States in the sum
2 of \$2500 or a total fine of \$5,000.

3 MR. NEWMAN: I have with me today a Notice of
4 Appeal. I will be representing the defendant. I
5 would ask your Honor to consider continuing his
6 bail status.

7 THE COURT: I will continue his bail status.

8 What about the payment of the fine, Mr. Newman?

9 MR. LEVIN-EPSTEIN: May I ask the Court for
10 a clarification as to sentence?

11 The Court has imposed a sentence, concurrent
12 sentence, under Title 18, Section 3651 on both one
13 and two, as follows, please correct me.

14 A three-year term to serve eight months, the
15 remainder suspended and in addition a three-year
16 period of probation, or two and a half year period
17 of probation?

18 THE COURT: Three years, both are concurrent
19 except for the fines.

20 MR. NEWMAN: Would your Honor consider staying
21 the fine until the appeal, until the appeal's been
22 decided?

23 THE COURT: Yes.

24 MR. NEWMAN: Thank you, sir. Thank you very
25 much, your Honor. I am wondering aloud, Judge, I

1 think he may have to report to the Magistrate to
2 sign a new appeal's bond.

3 MR. LEVIN-EPSTEIN: I believe the Court has
4 continued the bail pending the action.

5 MR. NEWMAN: What is the bail?

6 MR. LEVIN-EPSTEIN: \$5,000 personal recogni-
7 zance bond, the Government would not object to it.

8 MR. NEWMAN: I will check with the Magistrate.

9 MR. LEVIN-EPSTEIN: It's my understanding that
10 it's not necessary that the bond will stand in good
11 standing at this time.

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1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF NEW YORK

3 -----x

4 UNITED STATES OF AMERICA :
5 -against- : 75 CR 278

6 SEYMOUR ROSENWASSER, :
7 Defendant. :
8 -----x

9
10 United States Courthouse
11 Brooklyn, New York

12 May 21, 1976
13 10:00 a.m.

14 Before:

15 HONORABLE THOMAS C. FLATT, U.S.D.J.

16

17

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20

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22

23 STEVEN A. TESSLER
24 ACTING OFFICIAL COURT REPORTER

25

2
Appearances:3
DAVID G. TRAGER, ESQ.
United States Attorney
4
for the Eastern District of New York5
BY: ETHAN LEVIN-EPSTEIN, ESQ.
6
Assistant United States Attorney7
PETER A. PELUSO, ESQ.
8
Attorney for Defendant9
BY: ARNOLD J. WALLACH, ESQ., of Counsel

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1 THE COURT: Any reason we shouldn't proceed
2 with sentencing, Mr. Rosenwasser?

3 Do you wish to say something?

4 MR. WALLACH: If I may be heard.

5 MR. LEVIN-EPSTEIN: If I might interrupt this
6 for a moment.

7 The Court did allow counsel to serve this in
8 time for motion. For the record, I have received
9 no motion papers or any other motion for proposed
10 verdict of acquittal.

11 MR. WALLACH: We're going to for a judgment
12 of acquittal on this case, if your Honor wants a
13 full argument we're happy to do so.

14 There is an issue -- May I proceed?

15 THE COURT: Of course.

16 MR. WALLACH: There was an issue over here
17 where your Honor may recall that in the late stage
18 of this case before trial there was an order for
19 mutual discovery. We complied, yet when Mr. Rosen-
20 wasser took the stand United States Attorney had a
21 document signed to him which came to my complete
22 surprise.

23 With regard to the other area, there was a
24 spillover with regard to the building being the
25 locale of a prior transaction on the part of the

1 co-defendant and of course your Honor did tell the
2 jury to keep that -- to keep his case insulated to
3 that extent. Also, the question over here that we
4 believe that the verdict was not supported by the
5 evidence. There is no-corroboration of course is
6 required for a testimony of an accomplice.

7 Very frankly I think we're entitled to a
8 setting aside of the verdict, we call a judgment
9 NOV I believe and upon all the other arguments raised
10 at trial, Judge.

11 THE COURT: Well, I fully understand that the
12 argument about corroboration, but be that as it may
13 the testimony of this witness Fleischer has been
14 found credible by three or four juries I believe it
15 is now. I can't say as a matter of law that it's
16 incredible obviously given the record of testimony.
17 I think the rulings I made on the question of law
18 are correct, and of course under those circumstances
19 I have to deny your motion.

20 MR. WALLACH: There was an incident on
21 Government's direct case, there was a federal agent
22 I believe who interviewed Mr. Rosenwasser and when
23 it came Mr. Peluso -- Mr. Rosenwasser's attorney --
24 to cross-examine, an issue arose as to whether
25 Mr. Peluso could ask and attempt to elicit from this

1 agent when he spoke to Rosenwasser. Mr. Rosen-
2 wasser indicated he . . . nothing do, or didn't see
3 these people, didn't know these people. Your Honor
4 indicated this cannot be asked and Mr. Peluso cannot --
5 with the Government's witness -- cannot attempt to
6 vindicate his abstinence and we're relying upon your
7 Honor's reconsideration on that which motivated
8 Mr. Rosenwasser to testify.

9 THE COURT: I think I was correct in that,
10 in that decision.

11 MR. WALLACH: We have to raise these things.

12 THE COURT: I'll deny your motion. Do you
13 wish to say something?

14 MR. WALLACH: I read the pre-sentence report
15 last week and it was thorough and complete. I would
16 like to point out, Judge, that Mr. Rosenwasser has
17 been a hard worker all his life, at this stage if
18 the sentence, your Honor imposes is one of incarcera-
19 tion I think the results would be devastating. The
20 man, upon release of his incarceration will be --
21 he will lose the business he has built up. He employs
22 some 30 to 40 people who in my mind will definitely
23 be out of work, Judge, I think the relationship this
24 man has had with the people that work for him is
25 attested by the fact that some of these people were

1 prepared to come in and testify on his behalf and say
2 such good things about him. I think the man has
3 been a very hard worker all his life and I think if
4 your Honor finds that you must incarcerate him I think
5 of necessity Judge he will be in a position where he
6 will not be able to meet any of the business obliga-
7 tions he has and they're quite extensive. I think
8 the business will definitely go down the drain. Upon
9 release Judge from incarceration a man his age having
10 to start over would be a monumental task, Judge. I
11 don't think he would be qualified for anything other
12 than what he is doing and it's doubtful whether any-
13 one, Judge will want to employ a man of his age at
14 such a late stage in life. He will definitely,
15 Judge, be hit with all these financial difficulties with
16 the -- his inability to meet them during incarceration.

17 If your Honor feels incarceration is an
18 absolute must and this man cannot be sentenced in any
19 other fashion, I ask your Honor consider a weekend
20 sentence or allow this man to report to work during
21 the day and run his business and be incarcerated
22 during the evening hours.

23 THE COURT: Do you want to say anything,
24 Mr. Rosenwasser?

25 MR. WALLACH: I think the Pre-Sentence Report

1 will bear out the fact, I don't attempt to go beyond --
2 behind the jury's verdict, this man protested he is
3 truly a victim here and he is innocent of this crime.
4 I know, Judge as a result of this he was emotionally
5 upset, he was under sedation during the trial to
6 stablilize him somewhat.

7 This has been a traumatic effect both between
8 the defendant and his family.

9 THE COURT: You wish to say anything, Mr. Levin-
10 Epstein?

11 MR. LEVIN-EPSTEIN: No, your Honor.

12 THE COURT: You must understand that I have to
13 accept the jury verdict and Mr. Rosenwasser took the
14 witness stand and gave the jury his version of the
15 facts. Apparently they didn't believe him and this
16 is a serious offense as I'm sure you know.

17 I don't know of any way of stopping this kind
18 of offense, this kind of offense without some punish-
19 ment. So, it's judged on Count One of the indictment
20 that the defendant is hereby committed to the custody
21 of the Attorney General for the imprisonment of a
22 term of two years and defendant should become 18 USC
23 A405. At such time as support of Parole may determine
24 and defendant shall pay a fine in the United States
25 in a sum of \$5,000.

1 Now, he has the right to appeal and I assume
2 he will appeal and there is no financial affidavit
3 situation here.

4 MR. WALLACH: No.

5 THE COURT: You are going to file a Notice of
6 Appeal today?

7 MR. WALLACH: Yes.

8 Did you say today, Judge?

9 THE COURT: I will check. No. I have checked,
10 yes, will you file it today?

11 MR. WALLACH: We'll file it Monday or Tuesday,
12 we'll file it over the weekend.

13 THE COURT: Do you have the trial minutes?

14 MR. WALLACH: We have most of them, Judge,
15 I think we need one small motion.

16 Would your Honor consider my prior statement
17 that if he is to be incarcerated for this period of
18 time that your Honor consider having him serve that --

19 THE COURT: No.

20 MR. WALLACH: Thank you, Judge. Bail is
21 continued, Judge?

22 THE COURT: Yes.

23 MR. LEVIN-EPSTEIN: Pending appeal.

24 THE COURT: Yes.

25 (Whereupon, the sentencing was concluded.)

JUDGMENT AND PROBATION/COMMITMENT ORDER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

vs.

Docket No. 75 CR 278

SEYMOUR ROSENWASSER,

Defendant.

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In the present of the attorney for the government
the defendant appeared in person on 5-21-76 with counsel
Peter Peluso, Esq.

PLEA GUILTY, and the court being satisfied that
there is a factual basis for the plea in count 2.

FINDING & JUDGMENT Defendant has been convicted
as charged of the offenses of violating T-18, U.S.C. Sec. 371,
in that on ~~c~~ about and between March 3, 1972 and March 6,
1972, both dates being approximate and inclusive, the defendant
did knowingly and wilfully conspire to commit an offense against
the U.S., in violation of T-18, U.S.C. Sec. 659, by conspiring
to knowingly and wilfully receive and have in his possession
a quantity of women's knitted garments having a value in excess
of \$100.00, which garments had been stolen on or about March

3, 1972, from a motortruck belonging to the Arline Knitwear Co., while moving as an interstate shipment of freight from N.Y to N.J., the defendant knowing them to have been stolen.

The Court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 2 years on count 1 and that the defendant shall become eligible for parole under T-18, U.S.C. Sec. 4275(b)(2) at such time as the Board of Parole may determine and the defendant shall pay a fine to the United States in the sum of \$5,000.00.

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke

probation for a violation occurring during the probation period.

U.S. District Judge - THOMAS C. PLATT

200

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
PROBATION OFFICE

JAMES F. HARAN
CHIEF PROBATION OFFICER

ROOM 304, U. S. COURT HOUSE
BROOKLYN 11201
212-875-8044

June 4, 1976

Mrs. Marilyn Rosenwasser
5421 Glenwood Road
Brooklyn, New York

Dear Mrs. Rosenwasser:

The Honorable Thomas C. Platt, United States District Judge, has requested us to acknowledge his receipt of your letter of May 24, 1976, and respond thereto.

A review of the information concerning the offense for which your husband was found guilty reflects the following facts. In March of 1972, three individuals at gun point stole a tractor-trailor truck loaded with \$30,000 worth of women's knitwear garments. This is a very serious offense. Individuals who rob and steal shipments like this could not do so with any hope of making a profit unless other individuals were around who would help them hide the stolen goods and also buy the stolen goods from them. This is where your husband became involved in the offense. There was evidence to indicate that he permitted the stolen garments to be stored at his factory and that he had also agreed to purchase one-third of the garments for approximately \$2,500. It is of very serious concern to the Court that men such as your husband should allow themselves to help and engage in business with such thieves. For this reason the Court imposed a two year sentence. Under the section of the law under which this sentence was imposed your husband would be eligible to be released on parole in approximately one-third of the sentence.

With respect to Allicino, a six month sentence was imposed which he will have to serve in full. This sentence was decided upon by the Court because Allicino has already served a four month sentence on a similar offense committed at just about the same time that he acted as middle-man in the offense involving your husband. When Allicino was arrested on the other offense he was unloading stolen cases of whiskey at your husband's place of business. No charges were placed against your husband for that offense.

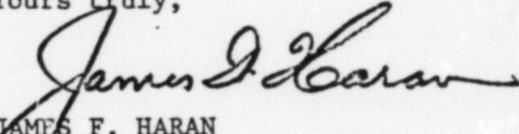
It is a regrettable act of life that citizens who have many good qualities frequently get themselves involved in illegal activities. The reasons why they do this, especially in their mature years, are often complex and cannot be easily explained even by themselves. Their families of course are always embarrassed and suffer along with them. The Court always sympathizes with families of the defendants. Nevertheless, the Court has an obligation to the community at large to let it be known that society disapproves of theft and will take steps to try to deter others from stealing or assisting thieves.

Mrs. Marilyn Rosenwasser
June 4, 1976

The Court's task is a difficult one to try to balance the interests of the defendants with the interests of the whole community, which disapproves stealing and must attempt to set some standards of honesty for the younger generation. We trust this will give you some insight into the complicated situation set in motion by your husband's illegal activities.

Further we are unable to predict the outcome of your attorney's appeal of the conviction in this case. However, it would certainly be prudent for your husband to plan this juncture some alternate means of running his business in the event that he does have to serve the jail sentence imposed by the Court.

Yours truly,



JAMES F. HARAN
Chief U. S. Probation Officer

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cc: Honorable Thomas C. Platt
U. S. District Judge

NOTICE OF APPEAL

203

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Docket No. 75 CR 278

-against-

SEYMOUR ROSENWASSER,

HON. THOMAS C. PLATT, JR.

Defendant.

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Notice is hereby given that SEYMOUR ROSENWASSER appeals to the United States Court of Appeals for the Second Circuit from the Judgment entered in this action on May 21, 1976.

Date: May 24th, 1976

PETER J. PELUSO, ESQ.

Counsel for Appellant

11 PARK PLACE

NEW YORK CITY, N.Y. 10007

To:
Clerk, U.S. Court of
Appeals
Second Circuit
Foley Square, N.Y.

ARNOLD E. WALLACH, ESQ.

Of Counsel

U.S. Attorney, Eastern District
of Brooklyn, N.Y.

Service of ^{two} ~~three~~ copies of the within
is admitted this ^{2nd} day of ^{August} 1976

AG 2 133 PM '76
EAST. DIST. N.Y.

R. DeMalo
United States Attorney for the Eastern District